

YOU AND THE LAW

S. BOYD DARLING

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YOU AND THE LAW

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By S. BOYD DARLING, LL.B., *of the Massachusetts Bar, Contributing Editor of Corpus Juris*

With an introductory COMPANIONATE INDEX *presenting in new form a Complete Outline of the Law for the Layman and revealing by a new arrangement of material Its Human Contacts and Intimacies*

Also a LAYMAN'S LAW DICTIONARY *explaining legal terms in current use*



NEW YORK AND LONDON
D. APPLETON AND COMPANY

1928

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PRINTED IN THE UNITED STATES OF AMERICA

NOV 27 1928

PREFACE

THE aim of this book is to anticipate, so far as one who writes law for lawyers may, the questions most frequently asked by the average person as to his legal rights and obligations, to give him the information he desires, and to guide him in such further research as he may wish to make.

The questions in the following pages have been selected to cover in a representative way all of the law touching the domestic, civil, and business relations of the average person. Occupational subjects are treated not from the standpoint of the one engaged in the particular occupation, but from that of the layman as he may be affected by that branch of the law. The law as stated, however, affects persons in over one hundred occupations. For that reason at the very end of the book is an Occupational Index, where any one engaged in a particular occupation, or riding a particular hobby, or absorbed in some matter of transcending personal interest or importance may find easily the law of special interest to him.

In a separate Bibliography are given references to standard law treatises on most of the subjects covered, where the reader will find an extended treatment of the general subject matter under discussion and the authorities from the several states.

Not every conceivable question which can be asked will be found in this book. But it is believed that for every question that may be asked a question somewhat suggestive of it and touching the same subject matter will be found. The method then is to follow the lead given by the question and answer into the particular treatise where the general subject is discussed at length, finding the appropriate treatise by use of the italicized subject index at the beginning of

the Bibliography. In this way the reader will undoubtedly find his own particular question answered.

The attention of the reader is directed on pages 83-85, questions 25-30, to one very simple way, already open to him under the law, in which any controversy between him and his neighbor may be adjusted without delay, free from the technicalities of a court trial, and, in a large number of cases, at trifling cost.

There are, of course, some situations which have passed beyond the possibility of a friendly adjustment. When that is so, it will be well to remember that the purpose of this book is preventive rather than curative. If your "case" has passed beyond this stage, a good counsellor is your surest refuge. A discerning friend after reading the manuscript of *You and the Law* remarked, not without humor but with great wisdom: "This book will bring a man to his lawyer sooner, I think, than he might otherwise come."

The obscurity of the law to the layman is due in some measure, undoubtedly, to the confusion which follows the use of long identifying and explanatory clauses. They have no place in a presentation to lay readers of this intensely human subject. The use of Amanda's name by her permission and, it is hoped, with her husband's acquiescence, has to a very great extent eliminated the need of these identifying clauses and their endless repetition. When the writer refers to

*the maiden all forlorn
That milked the cow with the crumpled horn
That tossed the dog
That worried the cat
That killed the rat
That ate the malt
That lay in the house that Jack built,*

he says simply "Amanda."

Another rule followed is to eliminate unnecessary definition of terms in the text, assuming that the reader is al-

ready familiar with the meaning of words not altogether divorced from common use. The Layman's Law Dictionary at page 255 explaining such legal terms as are used may be referred to if their meaning is not altogether clear.

It is only by a somewhat unrestrained use of language that the Layman's Law Dictionary can be called a dictionary. As in the text, the writer has sought the human equivalent for the ordinary law definition, drawing a picture from life where one seemed available and applying it to Amanda and her husband wherever it served his purpose. The reader's neighbor, Mr. Smith, or "Smith," as he is at times irreverently referred to, makes his appearance in this part of the work. He is well known in every town and village and needs no introduction.

The Companionate Index is confessedly an innovation in indexing. The word is intriguing and has the virtue of being in a way of getting itself understood. To those wishing to know more about the human intimacies of the law, the points at which it touches the life of the average man, it is hoped that the Companionate Index may be mildly instructive. It is a whim of the writer and should serve merely the whim of the reader. It is in no danger, probably, of being taken too seriously.

For the less adventurous, another index, more serviceable undoubtedly, of the good old-fashioned alphabetical type is added.

S. BOYD DARLING

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YOU AND THE LAW

PART I

INTRODUCTION TO THE LAW

THE first section of the book, the "Companionate Index," is an attempt to introduce the reader to the human contacts and intimacies of the law.

Why "companionate"?

Because, in the first place, it is an innovation—an innovation in indexing.

Because it is modern, experimental, mildly instructive and disciplinary.

Because it is not too serious.

Because it is friendly, serves a mood, and is possibly entertaining.

Finally, because after you have tired of having it around, you can easily lay it aside.

COMPANIONATE INDEX

QUESTIONS YOU AND YOUR FAMILY AND FRIENDS ASK
IN THE ORDER OF THEIR ASKING

When you are an infant in arms of the State.

Infants (i)

When you make your first contact with the disciplinary processes of the public schools.

Schools and School Districts (ii)

When you are notified by the Dean that your continued residence on the college campus depends upon "your conducting yourself with that decorum always expected of a gentleman."

Colleges and Universities (iii)

When, after weathering the storm with Sue,

Breach of Marriage Promise (iv)

you put into port with Amanda.

Marriage (v)

When, after the wedding, you are becoming acquainted with Amanda—and she with you.

Husband and Wife (vi)

When you are becoming interested in Timothy, named after a distinguished ancestor of *yours*—also the name of your college chum.

Parent and Child (vi)

Or when you have decided to adopt a child,

Adoption of Children (vi)

or have accepted guardianship of somebody else's child.

Guardian and Ward (xxxii)

When you are calling Amanda's attention to Henrietta's Paris divorce,

Divorce (vi)

and the conversation drifts naturally to matters of domicile.

Domicile (xii)

When your landlord calls for his rent

Landlord and Tenant (vii)

and claims as his own certain improvements

Landlord and Tenant (vii)

and fixtures which you have financed out of your savings,

Fixtures (vii)

and you begin thinking of owning your own home,

Vendor and Purchaser (viii)

of abstracts of title,

Abstracts of Title (viii)

and title insurance.

Title Insurance (viii)

When, after you have taken possession,

Deeds (viii); *Acknowledgment* (viii); *Covenants* (viii)

you begin to realize the necessity of defending your title,

Adverse Possession (x); *Ejectment* (x); *Quieting Title* (x)

and consolidating your position against your neighbors' attacks,

Adjoining Owners (ix)

and impressing on them your views as to boundaries,

Boundaries (ix)

easements,

Easements (ix); *Fences* (ix); *Party Walls* (ix)

and private roads appurtenant to your estate.

Private Roads (ix)

When, to aid you, you call in the local attorney,
Attorney and Client (x)

and lay your troubles before the local judge.
Courts (xxii); *Judges* (xxii)

When you contemplate a building loan,
Building and Loan Associations (xi)

and mortgage,
Mortgages (xi)

and consult the architect
Architects (xi)

and builder,
Building and Construction Contracts (xi)

and contract for the gas,
Gas (xiv)

electricity
Electricity (xiv)

and telephone.
Telephone and Telegraph (xiv)

When, the last bill paid and lien discharged,
Mechanics' Liens (xi)

you establish Amanda and little Timothy in the new home
and begin to interest yourself in the church and its mem-
bership,

Religious Societies (xiii)

the local clubs
Clubs (xiii); *Associations* (xiii)

and the local hospital.
Hospitals (xiii)

When you begin to have a professional interest in the local
doctor,

Physicians and Surgeons (xiv)

dentist,
Physicians and Surgeons (xiv)

druggist,

Drugs (xiv)

butcher and grocer,

Food (xiv); *Adulteration* (xiv)

any they begin to have more than a professional interest in you

Action of Debt (xv); *Work and Labor* (xv); *Use and Occupation* (xv); *Money Lent* (xv); *Money Paid* (xv); *Money Received* (xv)

and in your property;

Attachment (xv); *Garnishment* (xv); *Judgments* (xv); *Executions* (xv)

which in turn leads you to take an academic interest in the law protecting you against them,

Homestead (xvi); *Exemptions* (xvi); *Bankruptcy* (xvi)

and perhaps leads them to take a similar interest in the law protecting them against you.

Fraudulent Conveyances (xv)

When in the end you face them, man to man, and compose your difficulties.

Payment (xv); *Arbitration and Award* (xv); *Compromise and Settlement* (xv); *Accord and Satisfaction* (xv); *Assignments for Benefit of Creditors* (xv); *Compositions with Creditors* (xv)

Then when you begin to take thought of less tangible things, as your recreation,

Holidays (xvii); *Fish* (xvii); *Game* (xvii); *Theaters and Shows* (xvii); *Prize Fighting* (xvii); *Gaming* (xvii); *Motor Vehicles* (xviii); *Highways* (xviii); *Innkeepers* (xviii)

liberty,

Arrest (xix); *Bail* (xix); *False Imprisonment* (xix);

Insane Persons (xix); *Habeas Corpus* (xix);
Searches and Seizures (xix)

and privacy.

Right of Privacy (xix)

Or when you are forced to face the stern realities and consequences of your conduct,

Negligence (xx); *Trespass* (xx); *Fraud* (xx);
Nuisances (xx); *Torts* (xx); *Damages* (xx)

especially when the good name of your neighbor is involved;

Libel and Slander (xx)

and incidentally are brought to a full realization of the importance of keeping closer to the truth when under oath than under other circumstances, perhaps,

Affidavits (xxi); *Depositions* (xxi); *Oaths and Affirmations* (xxi); *Perjury* (xxi)

and of respecting the authority of the court and obeying its mandates.

Courts (xxii); *Judges* (xxii); *Contempt of Court* (xxii); *Obstructing Justice* (xxii)

Then, after Sunday at home, when you face the city again and business, the 8:14 and the subway,

Carriers (xxiii); *Railroads* (xxiii); *Ferries* (xxiii);
Street Railroads (xxiii)

and again dig into the morning's news and scandals.

Newspapers (xxiv)

And being keenly aware, after a look at the financial section, of the business risks and uncertainties brought home to you by membership in certain unfortunate enterprises,

Partnership (xxv); *Joint Adventures* (xxv); *Joint Stock Companies* (xxv)

and by the assumption of certain obligations which you unwittingly entered into out of loyalty to a friend,

Principal and Surety (xxv)

when you resolve hereafter to restrict your holdings to more conservative enterprises

Corporations (xxv)

with established reputations

Good Will (xxv)

and business methods,

Accounts and Accounting (xxv); *Sales* (xxv); *Auctions and Auctioneers* (xxv); *Trade Marks, Trade Names and Unfair Competition* (xxv)

and to insure yourself against your loss instead of insuring a stranger against his.

Indemnity (xxv)

When, finding yourself obliged to act through others, whom you appoint to represent you,

Agency (xxvi)

or yourself to be an employer,

Master and Servant (xxvi)

you insure your judgment in the integrity of those you appoint and employ.

Fidelity Insurance (xxvi)

When you insure your life,

Life Insurance (xxvii); *Mutual Benefit Insurance* (xxvii); *Beneficial Associations* (xxvii)

your house,

Fire Insurance (xxvii)

and, not without reason, become generally an insurance addict.

Accident Insurance (xxvii); *Health Insurance* (xxvii); *Automobile Insurance* (xxvii); *Liability Insurance* (xxvii); *Burglary and Theft Insurance* (xxvii); *Industrial Insurance* (xxvii)

Having determined upon a safe business policy for the future, when you at last address yourself to the business

problems of the day, your contract obligations as yet unperformed, the necessity resting upon you to make good on your church subscription,

Contracts (xxviii); *Bonds* (xxviii); *Undertakings* (xxviii); *Guaranty* (xxviii); *Subscriptions* (xxviii)

with mandatory processes of the court unpleasantly imminent;

Specific Performance (xxviii)

obligations altered perhaps,

Alteration of Instruments (xxviii)

or reformed since the day they were assumed,

Reformation of Instruments (xxviii)

but not yet cancelled

Cancellation of Instruments (xxviii)

or numbered among the missing,

Lost Instruments (xxviii)

and from which no relief by substitution of another in your place has been found,

Novation (xxviii)

and for which no defense is in sight;

Statute of Frauds (xxviii); *Limitation of Actions* (xxviii)

a note due today,

Bills and Notes (xxix)

with an uncomfortable feeling that your cash reserve in the bank is not adequate to meet it;

Banks and Banking (xxix)

the payment of a reward

Rewards (xxx)

for Amanda's lost purse,

Finding Lost Goods (xxx)

or a secret visit to your plausible friend,

Pawnbrokers (xxx)

unjustly suspected by others of usurious practices,

Usury (xxx)

to redeem your property;

Pledges (xxx); *Bailments* (xxx); *Chattel Mortgages*
(xxx)

the making of your will

Wills (xxxi)

to prevent an intestacy,

Descent and Distribution (xxxi)

the naming of your executor,

Executors and Administrators (xxxi)

and your initiation into the mysteries of executory and reversionary interests, of dower and curtesy,

Estates (xxxi); *Dower* (xxxi); *Curtesy* (xxxi)

and of trusts and estates in general;

Trusts (xxxii); *Estates* (xxxi)

and, in the late afternoon, the purchase of your cemetery lot.

Cemeteries (xxxiii)

When, the next morning, the recollection of wills and cemetery lots being still quite vivid, you begin to inventory your property,

Property (xxxiv); *Tenancy-in-Common* (xxxiv);
Joint Tenancy (xxxiv); *Partition* (xxxiv); *Eminent Domain* (xxxiv); *Improvements* (xxxiv); *Ground Rents* (xxxiv)

compute your income,

Annuities (xxxiv); *Dividends* (xxxiv); *Interest*
(xxxiv)

and make sure of your business rating.

Mercantile Agencies (xxxv)

When, after consultation with your financial adviser,

Brokers (xxxv)

you take steps to strengthen the weak points in the financial structure,

Exchange of Property (xxxv)

but without sacrifice of the old farm, a bit of sentiment and business idealism, still remaining from your younger days.

Agriculture (xxxvi)

When with a light heart you pay your taxes, little enough surely for such a farm,

Taxation (xxxvi)

read over again with uncontrolled emotion Big Tim's last letter on the crops—dear Tim—

Crops (xxxvi)

and arrange for a marketing of the surplus.

Factors (xxxvi)

When with a thrill of gratitude for past favors, regarding yourself as something of an industrialist as well as farmer,

Customs Duties (xxxvii)

unaffected by the recent petty annoyances of the tax collector,

Income Tax (xxxvii); *Inheritance Tax* (xxxvii)

you regard with affection and pride—your country,

United States (xxxviii)

and your country's flag,

Flags (xxxviii)

and contemplate with awe the vastness of its works at home

Army and Navy (xxxviii); *Militia* (xxxviii); *Federal Courts* (xxxviii); *Patents* (xxxviii); *Post-Office* (xxxviii); *Public Lands* (xxxviii); *Weights and Measures* (xxxviii)

and abroad,

Treaties (xxxviii); *Ambassadors and Consuls* (xxxviii); *International Law* (xxxviii); *Neutrality Laws* (xxxviii)

marvel at the wisdom of the founding fathers,

Constitutional Law (xxxviii)

and the vigorous growth

Census (xxxviii)

and Americanism of its composite citizenry.

Aliens (xxxviii); *Immigration* (xxxviii); *Citizens*
(xxxviii); *Naturalization* (xxxviii)

When you vow allegiance to it in war,

War (xxxviii)

and regard with a lively hatred and abhorrence the scoundrel
who turns traitor in its hour of need.

Treason (xxxviii)

In a spirit of exaltation, you dedicate yourself anew to the
public service in state,

States (xxxix)

county,

Counties (xxxix)

town,

Towns (xxxix)

and city,

Municipal Corporations (xxxix)

and to a deeper party consecration at election time,

Elections (xl); *Election Bets* (xl)

and, although deferred to as a conservative by your friends,
become an ardent supporter, in theory at least, of the
extension of the public service and the stringent control
of all monopolies.

Monopolies (xli)

When you begin to be introduced at the village meetings—
a tone of hopeful expectancy in the speaker's voice—as a
friend of the people and one of the country's best known
philanthropists,

Charities (xlii); *Gifts* (xlii)

and out of a real affection for the old home town, you dedicate a corner of your estate with a bit of forest for a public park for the neighbors and playground for their children.

Dedication (xlii)

When you capitulate to the entreaties of neighbors and friends, and begin writing in outline your Memories of a Full Life, and in confident anticipation of its wide sale, you assign the royalties to the village library for the purchase of books.

Copyright and Literary Property (xliii)

When, at last, you contemplate with a resigned faith, the day, not now remote, when for you the sun will go down below the horizon for the last time, and are conscious of a justified expectation that your passing out will at least make one considerable ripple on the surface of the community life.

Death (xliv)

PART II

THE LAW

It will be well for the reader of the following pages to remember two things which are fundamental in any discussion of legal rights. The first is that the legislature of a state can make the law in that state what it wants it to be, provided only it does not violate the Constitution of the United States and the constitution of its own state in doing it. The second is that you and your neighbor can make your rights as between yourselves what you want them to be, provided you come to an agreement on the matter and do not violate the law of the land in doing it. This book tells you what your rights are if you have not changed them by contract and if your legislature has not changed them by statute.

THE LAW

CHAPTER I

INFANCY

Contracts (2, 3); Loans (4); Necessaries (5); Trading Contracts (6); Banking Account (7); Acting as Trustee (8); Holding Office (9); Property (10); Liability for Fraud (11); Liability for Negligence (12); Infant Wives and Widows (13, 14); Putting Away Childish Things (1)

1. *When in the law do you cease being an infant?*

On the first moment of the day preceding your twenty-first birthday. Eighteenth in some states, if you are a girl.

2. *Can you contract during infancy?*

Yes. Generally, however, you can refuse to be bound by your contract. But until you have, the other party to the contract is bound.

3. *Does a contract you make in infancy bind you after you are twenty-one?*

Not unless you ratify it after coming of age.

4. *Must you repay money loaned you during infancy?*

No, unless you choose to do so after reaching majority.

5. *Are you responsible out of your own estate for necessities furnished you in infancy?*

Yes. An exception to the general rule. But it is for your own protection, otherwise no one would furnish you food and clothing except on a cash basis.

6. *Can you go into business on your own account during infancy?*

Yes, in some states. And your trading contracts made in carrying on your business will bind you. Another exception for your benefit, else no one would do business with you.

7. *Can you carry an account of your own in a bank, make deposits and draw checks?*

Yes.

8. *Can you act as trustee for another?*

Yes. And you cannot disaffirm your acts as trustee.

9. *Can you hold public office?*

Yes, if it is ministerial in character. If it calls for experience and judgment, no.

10. *Can you acquire property?*

Yes, but the power to manage it is in your guardian.

11. *Are you responsible in damages for your fraudulent act?*

Yes, if you are old enough to realize that it is fraudulent. You are not liable if the fraud is connected directly with the making of a contract.

12. *Are you liable to one injured by your negligent acts?*

Yes, although an act, negligent when done by an adult, may not be negligent when done by you. The younger you are, the less is required of you.

13. *If you are a girl and marry while still a minor, do you put aside the disabilities of infancy?*

Yes, if you marry with the consent of your parents or guardian.

14. *If your husband dies while you are still a minor, do you become an infant again?*

No. The assumption that infants lack experience—wherefore the protection granted them—seems to lose something of its force in the case of infant widows.

CHAPTER II

PUBLIC SCHOOL

Teachers on the School Board (1); Getting Rid of Undesirable Teachers (2-6); Married Teachers (7); Deductions from Salary (8); Admission of Pupils (9); Vaccination (10); Religious Instruction (11); Conduct Outside of School (12); Corporal Punishment (13); Suspension and Expulsion (14, 15)

1. *Can a teacher accept a place as trustee on the school board?*

No.

2. *May taxpayers veto the action of the school board in employing a teacher they do not want?*

It depends on whether the statute gives them that power. If it does, they can. Even though they haven't the power, they can remonstrate without making themselves liable in damages to the teacher if she is not employed, unless they act maliciously.

3. *May a teacher be removed before the end of the year on the ground of incompetency?*

Yes.

4. *Immorality?*

Yes.

5. *Inattention to duty?*

Yes.

6. *Failure to give satisfaction?*

Yes, if the contract of employment reserves that right

to the board. The right must be exercised in good faith—not capriciously.

7. *If a teacher marries, must she give up her position?*

If the statute or charter gives the board power to remove on that ground either in terms or by implication, she must go if the board tells her to.

8. *If the school is closed because of an epidemic, does the teacher lose her salary for the time lost?*

No, unless her contract provides for deductions in such case, or unless the school is closed by authority of law.

9. *Must you live in town in order to be admitted to school as a pupil?*

Yes, unless you pay the nonresidents' fee fixed by the school board.

10. *Is vaccination compulsory?*

Not unless the statute makes it so. Many statutes do.

11. *Can religious instruction be given in the public schools?*

No. There is every variety of law, however, as to whether the reading of the Bible, prayer and devotional singing constitute religious instruction. The constitutions vary, also the statutes, also the opinions of the Justices. In most states, the Bible may be read without comment; in some it cannot be. In some states, prayer and devotional singing are allowed; most of the recent authorities are against it.

12. *Can your teacher control your conduct outside of school?*

No, unless it interferes in some way with the school work.

13. *Can your teacher strike or whip you to punish you?*

Yes, in moderation. Your father can sue her for damages if the punishment is malicious or excessive.

14. *Can she expel you from the school and forbid your coming again?*

She can suspend, but the school board only can expel.

15. *On what grounds can the board expel or suspend you?*

Conduct so persistently bad that it is better for the school for you not to be there.

CHAPTER III

COLLEGE

Admissions (1); *Greek Letter Fraternities* (2); *Compulsory Chapel* (3); *Courses of Instruction* (4); *Professors* (5, 6); *Diplomas* (7)

1. *May college restrict admissions?*

Trustees of privately endowed colleges may, unless their power to do so is restricted by the deed of gift. The power of trustees of state universities to limit admissions or to restrict them is controlled by statute.

2. *May the trustees ban Greek letter fraternities?*

Yes.

3. *Does a compulsory chapel rule violate a state constitutional provision, where it exists, that "no person shall be required to attend a place of worship against his consent?"*

No, if the rule also provides that you may be excused by signing a request. With that provision in it, it is not, of course, a compulsory chapel rule, although it purports to be.

4. *Have the trustees an absolute power to determine what courses of instruction shall be offered?*

Yes, within the limits prescribed by the charter or deed of gift.

5. *Just what is a professor's status in the college scheme?*

He is an employee of the board of trustees. His rights depend entirely on the terms of his contract. They may

remove him at any time, but will have to pay him damages if they break his contract in doing it.

6. *May he teach at another college? May he publish books and teach pupils on his own account?*

Yes, he may do all of these things, if they do not interfere with the full performance of his duty to the college, and if, in the teaching of private pupils, he does not compete with the college.

7. *If you and other seniors refuse to attend your commencement exercises because of the faculty's decision to make them religious in character against your protest, can they refuse to give you a diploma on the ground of contumacious conduct?*

Yes, unless there is no ground at all for calling your conduct contumacious. But they must give you a certificate of the work you have done.

CHAPTER IV

COURTSHIP AND A WARNING

Proof Required in Breach of Promise (1, 2); Sunday Promises (3); Putting Sue Off (4); Sue's Remedy (5); Defenses (6, 7, 8, 9); Damages (10); Order to Marry (11)

1. *If Sue sues you for breach of promise, must she prove that you promised to marry her in express and direct terms?*

No. All she need show are facts and circumstances from which a jury could infer that that was the understanding between you.

2. *Must she show a written promise to marry or a letter of yours evidencing it?*

Not unless you both agreed that the marriage should not in any event take place for one year. If you merely expected it would not but did not provide that it must not, all Sue need do is to make a jury believe that you did propose and were accepted.

3. *If you proposed on Sunday, is it binding?*

Yes.

4. *If you simply have been putting Sue off, can she recover from you as for a breach?*

No, unless the jury takes the view that you were and still are unwilling to marry her.

5. *In such case, what must Sue do?*

She must bring you to the point of decision by offering to marry you and naming a time and place. If you are

not at the place at that time ready and willing, she then can start her action.

6. *Can you defend on the ground that you were an infant when you promised to marry Sue?*

Yes.

7. *Or that Sue was an infant although you were not?*

No.

8. *Or that you were a married man when you promised?*

Only if Sue knew it at the time.

9. *Or that you had been divorced and forbidden by the court to marry again?*

Yes, if Sue sues you in the state where you are forbidden to marry.

10. *If Sue carries the jury with her, as the chances are that she will, what can they take into account in assessing damages?*

The benefits she might have had if she had married you, the mental agony she has suffered because she couldn't. And punitive damages, if you have been rather mean about it, with a trace of scorn or malice in your behavior.

11. *Can the court order you to marry Sue and jail you for contempt if you don't?*

No.

CHAPTER V

MARRIAGE

Consent of Parents (1); Necessity of Ceremony (2); Going Out of the State to Marry (3); Annulment (4)

1. *If you elope with Amanda and you are both infants and are doing it without your parents' consent, is the marriage invalid?*

No, if the statute merely requires the consent of your parents and does not in express terms provide that a marriage without consent shall be invalid.

2. *Is it necessary that you and Amanda should be married in church, or by any particular person or with any particular ceremony?*

No, unless the statute expressly provides that such details are essential.

3. *If in the state where you and Amanda live, a church ceremony is essential to a valid marriage, can you go into some other state where it is not required and be legally married without it?*

Yes. And a marriage there will be recognized as valid in your own state unless the home statute expressly provides to the contrary.

4. *Can your neighbor's wife have her marriage annulled on the ground that her husband misrepresented his financial or social standing?*

No, unless the court takes the view that his deceit under the circumstances amounted to fraud or coercion vitiating the consent of the parties—which, however, it is inclined to do if the wife is very young and easily duped, or very old and feeble-minded.

CHAPTER VI

HUSBAND, WIFE AND THE FIRST CHILD

Taking Your Name (1); *Head of the Family* (2); *Selection of Home* (3); *Supporting Amanda* (4, 5); *Supporting Her Parents* (23); *Supporting Your Daughter and Her Husband* (21); *Supporting Your Grandchildren* (22); *Custody and Support of Your Own Children* (39, 40, 41, 43); *Liability for Necessaries* (6); *Amanda's Signature on Your Deed* (7); *Amanda's Separate Estate* (8, 9); *Amanda's Payment of Your Debts* (10); *Property Settled on Amanda* (11, 12); *Gifts* (13, 14, 20); *Timothy's Religious Instruction* (15); *Punishing Timothy* (16); *Timothy's Earnings and Property* (17, 18); *Timothy's Emancipation* (19); *Timothy Supporting You* (24); *Adoption of Children* (25, 26, 27, 28, 29); *Recovery for Injuries to Child* (42); *Separation* (30, 31); *Abandonment* (33); *Alienation of Affections* (34, 35); *Published Notice Withdrawing Credit* (36); *Divorce* (44-56, 63, 64); *Alimony and Legal Expenses* (57-62); *Funeral Expenses* (37, 38)

A. YOU AND AMANDA AND TIMOTHY; ALSO A DAUGHTER AND HER HUSBAND

1. *May Amanda refuse to take your name if you insist?*

No, unless the court permits her to do so.

2. *Are you or Amanda the head of the family in the eyes of the law?*

You, even though in some matters she may seem to be the manager.

3. *Have you a right to determine that it is best for you and Amanda to live in the city even though she wants to live in the country?*

Yes, but you must be reasonable with her.

4. *If Amanda is rich and you are poor, must you support her?*

Yes, reasonable support, according to your ability.

5. *Is the rule different if she has a separate estate?*

No, unless a statute so provides.

6. *Must you pay for the necessities Amanda orders?*

Generally, yes. Not always. But the chances of a different rule with you and Amanda are remote.

7. *May you convey your real estate without Amanda's signing the deed?*

Yes, if it is not the homestead (see Chapter XVI). But it will not convey Amanda's dower rights. She keeps them until she signs.

8. *Is Amanda's property hers after marriage, you having no dominion or control over it?*

Yes, where the statute so provides, or if, with your consent, the property has been placed in trust for her use.

9. *Can Amanda bind her separate estate to the payment of the family expenses?*

Yes, unless a statute prohibits it. You continue to be primarily liable, however.

10. *Can she obligate herself to pay your debts?*

Yes, if under the statute or trust deed creating the separate estate she has absolute power to dispose of it.

11. *May you before marriage agree to settle property on Amanda and will such agreement be enforceable after marriage?*

Yes.

12. *Can your creditors touch property settled in this way?*

No, unless in making the settlement you retain some interest in the property. Then only to the extent of that interest.

13. *May you make gifts to Amanda?*

Yes, if the statute permits you to do it, and if what you give her is yours to give. If your gift to her is merely a device to prevent others having a just and legal claim to the property getting hold of it, Amanda cannot keep it.

14. *May Amanda make gifts to you?*

Yes, if the statute allows it. But it must be a real gift, voluntary on her part. If you coerce her into making it, you can be made to give it back.

15. *If you and Amanda belong to different religious sects, who determines how little Tim shall be brought up?*

You do, primarily. You may surrender your right. In that case, the court determines.

16. *Can you chastise Timothy?*

Yes, within reason.

17. *Are you entitled to his earnings?*

Yes, unless you have relinquished your right.

18. *To his property?*

No, except property bought by him with his own earnings, and not even to that if you have relinquished your right to his earnings.

19. *Can he, under any circumstances, claim to be free from your control and entitled to his own earnings?*

Yes, if you have relinquished your right.

20. *May you make gifts to Timothy?*

Yes, provided there is no fraud on your creditors or the state involved.

21. *Must you support your daughter's husband?*

No.

22. *Your grandchildren?*

No, unless a statute compels you to do so.

23. *Amanda's parents?*

No, unless you have bound yourself by contract to do so.

24. *Must Timothy support you in your old age?*

Yes, if you are helpless and indigent, and where a statute requires it, as it generally does.

25. *May Amanda adopt a child without your consent?*

Not if the statute requires that the petition for adoption be signed by both you and Amanda. If the statute allows a separate petition by her, she may adopt without your consent, but in that case the adoption does not make you the foster father, and places no obligation upon you.

26. *May you adopt an adult as your "child"?*

In most states, yes. In some states, no.

27. *What must you do to make your adoption of the child effectual in law?*

There are two methods, some states following one, others following the other. First, by a writing executed, witnessed, acknowledged and recorded, in the same way as real estate is conveyed by deed. Second, by judicial proceedings starting with a petition and terminating in a decree of court.

28. *Is it necessary for you to secure the consent of the child's parents before adopting him?*

Generally, yes. But it is not required where they have abandoned him, or have been deprived of his custody in legal proceedings.

29. *Does your adopted child inherit a share of your property?*

Generally, yes, but the statute must grant him the right

of inheritance if he is to have it. If the statute does not grant that, he does not inherit merely because you have adopted him.

B. TOM AND HENRIETTA AND THEIR CHILDREN

30. *May Tom and Henrietta agree to separate and fix the amount Tom is to give Henrietta for her support?*

Yes, if the agreement is made in view of an existing or immediate separation.

31. *Can they in such case make an agreement as to the custody of their children, so that the court will be bound by its terms regardless of its own judgment as to what is best for them?*

No, but while such provision is itself ineffective, it will not invalidate the rest of the separation agreement.

32. *May Henrietta, without any agreement with Tom, get a decree from the court allowing her to live separately from him and to be paid by him a certain amount for her support?*

Yes, if Tom has deserted her, or has been guilty of cruelty or conduct justifying a divorce.

33. *Is Tom liable to criminal prosecution if he abandons Henrietta and leaves her without means of support?*

Generally he is, but only under a statute making abandonment an offense.

34. *If Tom has already lost Henrietta's affections by ill-treating her, can he maintain an action against another for alienating her affections?*

Generally, no.

35. *May Tom maintain an action for alienation of Henrietta's affections against her parents?*

Yes, if they act maliciously. But they may advise her if they act in good faith towards Tom.

36. *Can Tom publish notice not to give Henrietta credit, and, by so doing, relieve himself from all further obligation to support her?*

No. The publication simply notifies merchants that the obligation to support no longer exists, when that is the case. But if the obligation does exist, it cannot be evaded in this way.

37. *Must Tom pay Henrietta's funeral expenses?*

Yes, unless her executor must pay the bill out of her estate, as the statute provides in some states.

38. *Must Henrietta bury Tom?*

No.

39. *Have Tom and Henrietta an absolute right to the custody of their children?*

No. If parents are persons of bad character, or if they are unable to give their children reasonable support, the court will place them in the custody of others who can and will give them proper care.

40. *If Henrietta abandons the family home without justifiable cause, has Tom a right to the children as against her?*

Yes, unless there is some controlling reason against it in the court's opinion.

41. *If Tom has been deprived of the custody of his children because of his own misconduct, and custody has been awarded to Henrietta, does Tom still have to support them?*

Yes.

42. *Is Tom entitled to recover damages for injuries to his child through another's negligence?*

He can recover for loss of his child's services, his diminished earning capacity, medical and surgical expenses and for his own (Tom's) suffering. He cannot recover for the

child's mental anguish, physical pain and suffering, or disfigurement. The right to recover for these is the child's.

43. *Must Tom support Henrietta's children by a former marriage?*

No, unless he has taken them into his home and holds them out to the world as members of his family. Then he must.

44. *May either Tom or Henrietta secure a divorce in a state other than the state where they live?*

Yes, by changing the residence to the jurisdiction where the divorce is sought. It is not enough merely to move into the state temporarily for the purpose of securing a divorce.

45. *If Tom commits a single act of adultery, is Henrietta entitled to a divorce?*

In most states, yes. In a few states, no. In the latter states, the husband must be living in adultery, although in these states the husband may divorce a wife who is guilty of a single act of adultery.

46. *In states where cruelty, for instance, is ground for divorce, may Henrietta after divorcing Tom once on this ground and then later remarrying him, divorce him again on the same ground?*

Yes. No matter how many times she marries him, she is always eligible for a new divorce if Tom still continues to beat her up.

47. *May Henrietta divorce Tom if he is convicted of crime?*

In many states, yes. And she is entitled to a divorce even though he is afterwards pardoned.

48. *Or has become an habitual drunkard?*

If the statute authorizes it. Otherwise, not.

49. *Or refuses or neglects to support her?*

Yes, if the statute permits it. Otherwise not.

50. *Or if he treats her with personal indignities?*

Yes, where the statute authorizes it. The indignities must be such as to make Henrietta's life burdensome and living with Tom insupportable.

51. *Or if Tom has an ungovernable temper?*

In some states. But it must be such as to endanger Henrietta's safety or health.

52. *Can Tom set up in defense that he has signed an agreement for a separation?*

No, where the divorce is sought on grounds other than desertion. He may, however, if in the separation agreement, Henrietta promised that she would not sue Tom for divorce for any past offenses.

53. *Or that he has been forgiven?*

Yes, unless he has done it again after being forgiven.

54. *Or that he is sorry and is going to reform?*

No.

55. *Or that Henrietta consented to his misconduct?*

Yes.

56. *Where both Tom and Henrietta desire a divorce and agree that Tom shall commit the statutory offense for the purpose of getting it, will a divorce be granted?*

Not if the court knows it. Such an agreement is a fraud on the court.

57. *Is Henrietta entitled to temporary alimony pending the trial of the divorce action, if Tom allows her and the children to occupy the family residence and pays all the household expenses?*

No.

58. *Must Tom pay Henrietta's legal expenses?*

Yes. An allowance for this purpose is made by the court.

59. *When is Henrietta entitled to permanent alimony?*

Generally, when she succeeds in securing the divorce. If she fails, or if she is the guilty party in a suit brought by Tom, she is not entitled as a general rule. There are, however, statutory exceptions.

60. *How is the amount of her permanent alimony fixed?*

The amount is discretionary with the court, in the absence of a provision in the statute controlling it. One-fourth or one-third of Tom's income is the probable allowance, although there are cases where one-half has been allowed.

61. *Does Henrietta forfeit the alimony payments if she marries again?*

No, but it may be ground for modification of the decree, decreasing the allowance. If her new husband is financially an adequate substitute for Tom, he may be discharged from further payments altogether.

62. *If Tom remarries and his second wife is a considerable drain on his financial resources, can he look for a reduction of the alimony allowance to Henrietta on that ground?*

No. On the other hand, if his second wife brings in more to the family chest than she takes out, Henrietta cannot claim an increased allowance for that reason.

63. *What becomes of Tom's property and Henrietta's after the divorce?*

In some states there is a division. In others, a restoration of ownership as it existed before the marriage. In others, a disposition by the court in accordance with its judgment as to what is just, equitable and reasonable.

64. *Of the children?*

The court awards their custody to some designated person. Neither Tom nor Henrietta has an absolute right to

them. The consideration controlling the court's action is the welfare of the children. Very young children and daughters are awarded generally to the mother. If she is shown to be an unfit person to have them, some other arrangement is made.

CHAPTER VII

THE RENTED APARTMENT

Lease (1); *Landlord's Obligation* (2, 3); *Taxes* (4); *Insurance* (5); *Repairs* (6, 8); *Improvements* (7); *Rent* (8, 10, 11, 15); *Bankrupt Tenant* (9); *Notice to Quit* (12, 13); *Renewal* (14); *Option to Purchase* (16); *Condition of Premises at End of Term* (17); *Fixtures* (18, 19)

1. *Must your lease be in writing?*

Generally, leases for one year or less need not be in writing. A lease for a longer term must be in writing. The statute requiring it is called the Statute of Frauds.

2. *Must your landlord deliver the premises to you in tenantable order, and keep them so?*

In some states, a statute requires it. Often the lease provides for it. But in the absence of any such provision in statute or lease, he need not do so.

3. *Must your landlord furnish you with heat and water?*

Not unless a statute compels him, or the lease provides for it, or the circumstances are such that a promise to furnish heat and water will be implied. If you are leasing an apartment, or even part of a private house, where the heating plant for the whole house is in control of the landlord, the reasonable inference is that the landlord has undertaken to furnish heat and his promise to do so will be implied.

4. *Who pays the taxes?*

The landlord, generally. But the lease may stipulate that you pay them. If you undertake to pay the landlord's taxes, you must be sure that they are legally due. If

you pay them when they are not due, you cannot compel the landlord to refund.

5. *Insurance?*

You need not pay the insurance unless your lease requires you to do so.

6. *The repair bill?*

You do, unless the lease otherwise provides.

7. *Improvements?*

In the absence of any agreement between you, neither you nor your landlord are under any obligation to make improvements, so that the one who makes them has to pay for them. Either may agree to make them, however. The obligation in that case is determined by the provisions of the agreement.

8. *May you refuse to pay your rent if the landlord refuses to make ordinary repairs?*

No. This is so, of course, if the landlord is under no obligation to repair. But it is also generally so even where the landlord covenanted to repair and then refused to do so. You have your remedy against him for breach of his covenant, but you must pay your rent. The obligations are independent of each other.

9. *If you take a lease for a definite term, do you lose it, if during the term you become bankrupt?*

No, unless your lease so provides.

10. *Or fail to pay your rent?*

Generally, yes, but only because a statute or the lease itself so provides. In the absence of such provision, failure to pay rent is not ground for forfeiture.

11. *If your landlord during the term notifies you that your rent has been increased, must you pay the higher rent?*

No. The rental named in the lease binds both of you

for the entire term, unless you both agree to a change. Such a change may result from your landlord's notifying you of an increase in the rent, and your acquiescing and paying at the increased rate.

12. *Are you entitled to a notice to quit at the termination of a lease for a definite term?*

No, unless the lease or a statute requires it.

13. *In what cases must your landlord give you notice to quit?*

Where the lease runs for an indefinite period from year to year, or from month to month, or from week to week. The length of time of notice is regulated by statute generally. It can only be given on the last day of the current period. If the lease is from year to year, on the last day of the year.

14. *Have you a right to have your lease renewed at the end of the term?*

Not unless the lease contains an option to renew, or a contract for renewal outside of the lease has been made. And such contract is not enforceable unless it provides definite terms for the new lease or a definite method for determining them. An option to renew, if it is construed to mean on the same terms as the old lease, is definite and can be enforced.

15. *At the termination of the lease, may your landlord increase the rent if you wish to stay there?*

Yes, unless controlled in some way by statute. Since the war, and because of the unprecedented shortage of houses, several states have passed Emergency Rent Laws, and under these laws, as a general rule, tenants may continue in occupation under the old rate, or at an increased rate on a reasonable basis to be ascertained in the way the statute provides.

16. *If your lease contains an option to purchase but at no fixed price, is it enforceable?*

No, if there is no provision in the option at all about the price. Something must be said about the price to show that your minds met on that point. It is not necessary that an exact sum be named. It is sufficient if the price is fixed not to exceed a designated amount or not to be less than a designated amount, or at an amount offered by any other person.

17. *When you leave, must you restore the premises, if you have altered them, to the condition they were in at the beginning of the lease?*

Yes, and you must pay the landlord for any substantial injury you have done. You are not liable for ordinary wear and tear.

18. *If you have added to the house some ornamental fixture merely to make it more comfortable and attractive while you were there, can you remove it?*

Generally, yes, unless it cannot be removed without damaging the house. Of course, if you put it there to replace something which you destroyed or damaged, you cannot take it away.

19. *If you leave the fixtures in the house when you surrender it to the landlord at the end of the term, can you afterwards come back and take them?*

No.

CHAPTER VIII

PURCHASE OF LAND FOR THE NEW HOME

Agreement to Purchase (1); Postponing Payment (2, 3); Restrictions (4); Marketable Title (5); Taxes (6); Taking Possession before Execution of Deed (7); Errors in Abstract (8); Insuring the Title (9, 10); Validity of Deed (11, 12, 13); Delivery (14); So Many Acres "More or Less" (15); Recording (16); Acknowledgment (17); Covenants (18, 19, 20)

1. *If you are negotiating with an owner of land for its purchase, at what moment of time do your negotiations constitute a binding contract?*

When your minds meet in agreement upon all the terms of the contract and the party to be charged by it has signed a written memorandum of those terms. It may be informal. A formal contract of sale is not necessary unless one of the terms of the agreement is that it shall not become binding until a formal contract is made.

2. *Can you by a subsequent agreement have the time for payment extended?*

Yes.

3. *If you are not prepared quite yet to sign a contract of purchase, is there any form of contract you can make with the owner which will bind him to sell it to you when you do want it?*

Yes. Such a contract is called an option. It must be based on a legal consideration and it must be definite in its terms.

4. *Do the owner's representations to you as to restrictions to be placed upon surrounding land still belonging to him bind him?*

Yes.

5. *What kind of a title are you buying under your contract of purchase?*

It depends upon the terms of the contract. If nothing is said about title, an indefeasible estate in fee simple is usually understood to be intended. The title bargained for is a good or marketable title. If it turns out to be defective, you are not bound to take it.

6. *Who must pay the taxes on land you have contracted to purchase, you or the owner?*

It depends on the terms of the contract. If it is an agreement to convey free from all encumbrances, as it usually is, the owner must generally pay all taxes which are liens upon the property when the conveyance is made and you must pay all taxes which become a charge upon the land after the conveyance.

7. *When you go into possession of land under a contract for sale but before the deed is executed and delivered, what are your rights to the possession of the land thereafter?*

So long as you live up to the terms of your agreement, you are entitled to remain in possession. If you fail to do so, the owner may reënter and put you out of possession.

8. *To what extent can you hold the examiner of your title liable for errors in his abstract?*

It depends upon what the examiner undertook to do. He is not liable as an insurer of the title unless in his contract he did insure it. Short of that, he is liable for loss to you resulting from errors due to a failure on his part to use reasonable care and skill in his work.

9. *If you have your title examined by a title insurance company and the company passes the title, and it is later found to be defective, is the insurance company liable for the loss?*

If it gave you a policy insuring the title, then it is liable if the loss suffered was one of the risks insured against. If it did not insure but only undertook to examine, it is liable only for lack of skill and care in examining.

10. *If the risk insured against in your policy is an eviction by one holding a paramount title, can you recover from the insurance company if an outside claimant to the land threatens to evict you?*

No. A threat to evict is not an eviction. The risks insured against in your policy—and you must look to the terms of it to see—are the only ones on which you can ground your action against the insurance company. Title insurance is not necessarily insurance of a title. It is merely a contract to indemnify the assured against the particular losses insured against, and then only to the extent of the loss actually suffered.

11. *Is a money consideration for a deed essential to its validity?*

No. A legal consideration is necessary, but love and affection is a good consideration for a deed to one's wife or child.

12. *Will uncertainty in the description of the premises conveyed make your deed void?*

No, if the description contains any reference whatever to show what land was meant and points to other documents or facts outside the deed by which the uncertainty can be cleared up.

13. *Is a seal necessary to the validity of a deed?*

Yes, unless a statute dispenses with it, as it does sometimes. But a deed without a seal may be effective as a

contract to convey where it cannot operate as a conveyance. Witnesses are not necessary unless a statute requires a deed to be witnessed, as it sometimes does.

14. *Must the grantor make a formal delivery of the deed to you?*

Delivery is essential, but it need not be formal. Any act of the grantor indicating his intent to surrender to you the control over the land is sufficient.

15. *If your deed purports to convey so many acres "more or less," can you have it set aside if it conveys less land than you thought you were going to get?*

If the error is slight, no. If it is so great that it cannot be held to have been within the contemplation of the parties, yes, unless the agreement indicates that both of you intended the deed to stand no matter how great the variation. The rules governing the interpretation of deeds follow the rules used in interpreting contracts on page 153.

16. *Is it necessary to the validity of a deed that it should be recorded?*

Generally, no. The purpose of recording is merely to give everybody dealing with the land afterwards an opportunity to know about the deed, and to act accordingly.

17. *Is the owner's acknowledgment that it is his free act and deed necessary?*

No, unless the statute requires it. Generally under the statute it is necessary before it will be accepted at the registry for recording.

18. *If after the deed is executed and delivered to you, you discover that you have no title, have you any remedy against your grantor?*

No, if the deed contains no covenants of title and there is no fraud or mistake. The deed generally contains covenants, and then your remedy depends on the nature of these covenants.

19. *How should you protect yourself against possible outstanding leases or mortgages or unsatisfied judgments against your grantor and which would be enforceable against the land you are buying?*

By seeing that your deed contains a covenant against encumbrances.

20. *Or against eviction by some one having a title to the land better than yours?*

By seeing that your deed contains a covenant of warranty.

CHAPTER IX

NEIGHBORS

Water Boundaries (1); Boundaries on Highway (2); Conflicting Boundaries (3); Establishing the Line (4); Destroying Landmarks (5); Changing Grade (6); Building over the Line (7); Keeping Buildings in Repair (8); Wall or Chimney Left Standing after a Fire (9); Shutting off Air and Light (10); Dwerting Water (11); Your Right as against Your Neighbor to Take or Use the Water from a Stream Bordering Your Land and His (12); Fruit on Branches Overhanging Line (13); Boundary Trees (14); Right of Way (15, 16); Other Easements (17); Failure to Use Easement (18); Drainage (19); Building over Right of Way or Pipes (20); Boundary Fences (21, 22, 23); Party Walls (24, 25); Private Roads (26, 27, 28)

1. *How far does your ownership extend where your land is bounded on the ocean or on a river?*

Where bounded by the ocean, to high-water mark only, unless a statute otherwise provides. Where bounded on tidal navigable rivers, generally to high-water mark. Where bounded on nontidal navigable rivers, to the water's edge in some states, to the middle of the stream in others. Where bounded by nontidal, nonnavigable streams, generally to the middle line of the stream.

2. *Where bounded on a street or highway?*

Generally to the middle of the street unless a deed, either yours or an earlier one in the chain of title, fixes it at the edge.

3. *If the boundaries in your deed conflict, as, for example, where the courses and distances given do not take in a tree or lake or river, also referred to in the deed as a boundary, which is to be taken as the true boundary, the tree, lake or river, or the courses and distances?*

Generally the tree, lake or river.

4. *Where there is a question as to where your line runs, how can you and your neighbor settle it?*

There are several ways. You can establish the line, of course, by agreement. Or by building a fence and both of you accepting it as the division fence. Or by bringing proceedings under the statute to have the line established. Or by requesting an official survey by the county surveyor in states where a statute authorizes such procedure.

5. *Have you any remedy against one who removes or destroys a tree or other landmark constituting one of your boundaries?*

Yes. You can recover damages, or, in most states, have him prosecuted criminally. If he has not yet done it, but is threatening to do so, you can have him ordered by the court not to do so.

6. *May your neighbor raise the level of his lawn above that of yours?*

Yes, but he must build a retaining wall to prevent any encroachment on your land.

7. *If, by mistake, you have built over the line an inch or two on to your neighbor's land, can he compel you to tear down the building or move it?*

No, ordinarily not. The only thing your oversensitive neighbor can do is to bring an action at law and recover what he can for the actual damage suffered.

8. *Are you under any obligation to your neighbor to keep your buildings in repair?*

No, unless you negligently permit them to injure your

neighbor's property. Then you must pay him the damages suffered.

9. *Must your neighbor pay you for damage to your property from a falling wall or chimney left standing on his land after a fire?*

Yes, if you told him to take it down and he did not.

10. *If your neighbor sells to you a part of his land with buildings on it, has he any right to build himself on the part he retains, if by so doing he darkens the windows or shuts off the air from the buildings he sold to you?*

Generally, yes. If, however, in the deed to you he covenanted that he would not do so, then he cannot.

11. *May your neighbor divert large quantities of water on to your land, damaging it?*

No. This applies also to water dripping off of his roof on to your land.

12. *If you own land bordering a stream of water, what are your rights to the use of the water as it flows by your land?*

You can make any reasonable use of it whatever. You can use it for domestic purposes, to water your cattle, to run your mill or factory, or to irrigate your land. You can build a dam across it to run your mill. You can dig ditches and divert the water of the stream into them, returning it again to the stream before it leaves your land. The thing to remember is this: Your neighbor downstream also enjoys exactly the same rights. All along the stream, owners of land have the same right to use the water. It follows, of course, from this that each of you can only make a reasonable use of it. You must so use it that you will not interfere with your neighbor's equal right to its use. You have a right to pure water. So has your neighbor. Therefore you must not do anything to pollute it. You

have a right to the natural flow of the stream. So has your neighbor. Therefore by your dams and ditches, you must not unreasonably interfere with the natural flow. Riparian rights, for that is what they call them, are correlative, and both are measured and tested by this rule of reasonable use. Generally it is for a jury, not for you or your lawyer, to say what under all the circumstances of your particular situation is a reasonable use.

13. *Has your neighbor a right to take fruit off your tree from the branches overhanging his land?*

No.

14. *Who owns a tree on the boundary line?*

You and your neighbor own it in common. But neither you nor he can do anything which will injure the tree without the other's consent.

15. *May your neighbor acquire a right of way over your land merely by using it whenever he wishes?*

Under certain conditions. He must have used the way for the length of time "prescribed" by statute—generally twenty years. During all of that time, he must have claimed a right to do so as against you. If you have given him permission to use it, his use of it is not "adverse" and can never ripen into a prescriptive right. His use of the way must have been uninterrupted and continuous for the prescriptive period. He must have used it either with your knowledge, so that you might have taken steps to stop it at any time, or else his use of the way must have been so open and notorious that you would be held to have had knowledge of it. All these conditions must be shown to have existed before he can acquire any legal right to the use of the way.

16. *In what other way may your neighbor acquire a right of way over your land?*

By express grant from you to him, or by his reserving a

right of way over the land when he sold it to you, or by showing that his land is completely surrounded by yours and that he must go over it to get out to the highway. This is called a way of necessity. But to establish a way of necessity, it must appear that his land and yours were once owned by the same person.

17. *Can your neighbor acquire other rights over your land besides a right of way?*

Yes. A right to use water, a right to lay pipes or drains, and a right to use a wall as a party wall.

18. *Is an easement lost by mere failure to use it?*

Generally, no.

19. *If your neighbor has drainage rights over your land, must he keep the drain in repair?*

Yes. If sewage escapes and damages your land, you can hold him liable.

20. *Can you erect buildings over a right of way or easement pipes?*

Yes, if the buildings do not interfere with the use of the easement.

21. *Can you compel your neighbor to pay half of the cost of building a fence between your land and his?*

Not unless there is a custom in the place where you live obligating him to do so, or he has agreed to pay half of it, or a statute compels him.

22. *If you and your neighbor do not agree on fence matters, how do you settle it?*

Under the statute, you can petition the fence viewers to settle it for you.

23. *May your neighbor remove a partition fence between his land and yours?*

Not unless you consent or the statute allows it.

24. *May your neighbor in building his house up to the division line place half of the separating wall on your land?*

He can if you agree to it or if the statute allows him to do so, or if you stand by and make no complaint until it is completed.

25. *If your neighbor builds the wall entirely on his own land, can you use it later to support your own house.*

If you reach an agreement for your use of it, or if the statute allows it.

26. *If you own land back from a public highway entirely surrounded by land belonging to others under circumstances preventing your claiming a way of necessity (see above question 16) over the intervening land, how do you secure access to it?*

Under the statute, you start proceedings for the establishment of a private road. It is established by public authority, and the land of others can be taken for the purpose under the power of eminent domain. You pay for it.

27. *Who pays the cost of repairs, you or the public?*

You do.

28. *Has the public a right to use your private road?*

Yes.

CHAPTER X

DEFENDING THE TITLE

A Stranger Securing Title to Your Land by Taking Possession of It (1, 2, 3, 4, 5, 6); Getting Back Your Land (7); Profits for the Use of It (8); Remedy against Stranger Out of Possession Claiming Title to Your Land (9); Attorney's Authority in Representing You (10, 11); Purchase by Attorney on His Own Account (12); Contingent Fees (13); Lawyers' Charges (14)

1. *Can you lose the title to your land by another's taking possession of it?*

Yes, if such possession is to the exclusion of everybody else, under claim of right hostile to your title, openly so there is no excuse for your not knowing about it, and continued in this way without interruption for the period prescribed by the statute, generally twenty years.

2. *Is it necessary that the adverse possessor should himself live on the land?*

No. Any act of dominion or ownership, as, for example, cultivating the land or clearing it of timber or building roads through it, may constitute the "actual possession" required.

3. *Is it necessary that he should be known generally in the community as being in possession of the land under claim of right?*

Not if it appears that you knew about it.

4. *Is it necessary that he should himself remain in adverse possession for twenty years?*

No. The possessions of successive occupants all claiming under the same right of possession adverse to your title

may be pieced together in making up the twenty-year period.

5. *If at any time before the end of the twenty-year period you enter upon the land claiming right to possession as owner, what effect will it have on the adverse claim?*

It defeats its ripening into title.

6. *Can one in possession of your land as your tenant or licensee secure title to it by adverse possession?*

Not if he continues his possession under the lease or license. In such case, his possession is not hostile to you, as it must be to ripen into title by adverse possession.

7. *How do you recover possession of your land from one in wrongful possession claiming title?*

Generally by bringing an action of ejectment against him.

8. *After you have recovered possession of your land, are you entitled to any further remedy against the wrong-doer?*

Yes. During the time you have been out of possession, the land has been yielding profits or other benefits to the person wrongfully in possession. The latter must account to you for these.

9. *Have you any remedy against a stranger out of possession who claims title to your land, or must you wait patiently until he sees fit to sue you?*

Under the statutes generally, you can bring an action in equity, known as an "action to quiet title," against the claimant and have the claim settled at once. Otherwise, if there were no way of ridding yourself of the claim until the claimant saw fit to sue, you would have to suffer an impairment of value in your real estate. Such a claim is a cloud on your title interfering with the marketability of your land. Under the statute you may have it removed.

10. *When you employ an attorney to represent your interests in litigation, what is the scope of his authority?*

He has an absolute authority regardless of your consent in all matters relating to the remedy, the choice of the form of remedy, the court to which he takes your case, the pleading and motions and the conduct of the trial. He has no such absolute authority over matters affecting the cause of action itself or the surrendering of any substantial right. When he does this, he must have your consent to do it. He is presumed to have it, but if in fact he acts without your authority, you can disaffirm his acts if you wish to.

11. *When you employ an attorney to try a case for you, do you thereby put it into his power to compromise or settle the suit for less than you are suing to recover?*

No. To do this, the attorney must have your consent. If he does it without your consent, you can refuse to be bound by it. But you must act promptly. If the compromise seems to be a fair one, and you have not objected, your acquiescence will be presumed, and then the settlement will bind you.

12. *Can your attorney retain property which he has purchased for himself at a low price as a result of information coming to him through representing you in litigation over the property?*

No. You may elect to treat him as a trustee of the property for your benefit, and compel him to account to you for the profits made in the deal.

13. *If you employ an attorney to defend your title, agreeing to convey to him a stated portion of the land if you succeed in the suit, and before judgment your land increases greatly in value, is the attorney upon securing judgment in your favor entitled to a deed of the portion you agreed to give him?*

Yes. Contracts for contingent fees are valid if made in

good faith and for a reasonable amount. In some states, the lawyer cannot agree to divide his contingent fee with an outsider who brought the case to him.

14. *What is a fair charge for a lawyer's services?*

There is no fixed measure of value. It depends on the character of the service, the time given to it, the importance of the case, amount involved, responsibility incurred. A fair charge is that usually charged by lawyers for similar services in your neighborhood, or an amount that could have been obtained under a contract made in advance with a fair-minded client of business sense.

CHAPTER XI

BUILDING

Securing Your Building Loan (i, 2); Your Liability for Payments (3); Paying a Premium (4); Validity of Your Mortgage (5, 6, 8); Security for Future Advances (9); Covering Your After-Acquired Property (10); Recording (11); Remaining in Possession after Mortgage (12); Selling (13); Cutting Timber (14); Collecting Rent (15); Paying Taxes and Insurance (7, 16, 17); Repairs (18); If You Become Bankrupt (19); Failure to Pay and Foreclosure (20); Redemption (21); Your Architect's Power to Bind You (22); Ownership of Plans (23); Paying Your Architect (24); Architect's Liability for Mistake (25); The Contract to Build Your House (26); Building Regulations (27); Extras (28); When the House Must Be Done (36); Penalty for Delay (30); Your Responsibility for Delay (31); Performance to Your Satisfaction (32); Following Your Directions (33); Furnishing Your Own Materials (34); Paying Your Builder (37); Payment on Architect's Certificates (35); Holding Back Payments (29); Deducting Payments to Materialmen (39); Mechanics' Liens (38, 40)

1. *What must you do to secure a building loan from a building and loan association?*

You must become a member of the association.

2. *Does your membership entitle you to a loan as a matter of right?*

Yes, conditioned on the association having available funds, and your offering proper security for the loan.

3. *What does your membership mean in the way of liability for payments?*

You must make the payments due on your stock as they

fall due. This includes interest payments on your loan. You must pay assessments which the association may levy to cover losses and expenses. You must pay fines imposed for failure to pay your dues on time.

4. *Where you are required to pay a fixed sum for obtaining the loan, does such payment, known as a premium, constitute a violation of the usury laws?*

Generally, no, even though the premium and interest on the loan when taken together exceed the legal rate of interest. This is so where the statutes exempt building and loan associations from the operation of the usury laws, or where the statutes expressly authorize the taking of premiums.

5. *Is the mortgage you give to secure the loan invalid if the description in it of your land is vague and uncertain?*

No, if it contains any data at all or any references to other documents or evidence from which a clear, definite description can be made out. If it is impossible by any means referred to in the mortgage to identify the property, then it is invalid.

6. *Must your mortgage describe the debt secured?*

Yes, but here again all that is needed is sufficient data in the mortgage so that the debt can be identified.

7. *May a mortgage legally stipulate that, upon your failure to pay taxes or insurance when due, the entire amount of the mortgage debt shall become due and payable?*

Yes.

8. *If there is some radical defect in the execution of your mortgage, can it be enforced against you as a mortgage?*

Yes. The mortgagee who loaned you the money may not be able to have it recorded, and for that reason his title may not be good as against others who have no notice of it, but it certainly binds you.

9. *If your mortgage is made to secure future advances also, can the mortgage be held as security for such advances when made?*

Yes.

10. *If your mortgage contains a clause covering property which you do not now own but which you may afterwards acquire, will it cover such property when it becomes yours?*

Yes. But the property intended to be covered in this way must be referred to in the mortgage, and the clause becomes operative only with reference to that property.

11. *Must your mortgage be recorded in order to bind you?*

No, unless a statute makes recording essential to the validity of the mortgage.

12. *After mortgaging your property, may you remain in possession?*

Yes, unless there is an agreement between you and the mortgagee to the contrary.

13. *May you sell it?*

Yes, subject, of course, to the mortgage.

14. *Cut and sell the timber?*

Yes.

15. *Collect and keep the rent?*

Yes, unless the mortgage expressly covers the rents.

16. *Must you pay the taxes?*

Yes.

17. *Insurance?*

Yes, in pursuance of your covenant to do so.

18. *Repairs?*

No, unless you have covenanted to do so.

19. *If you should go into bankruptcy and get a discharge from your debts in bankruptcy, will that operate as an extinguishment of your mortgage?*

No. The debt and your personal liability to pay it are two entirely different things. The bankruptcy discharge releases you from personal liability, but the debt remains, and the mortgage is still there to secure it.

20. *If you fail to pay the mortgage when due, and there is no renewal, how does the mortgagee realize on his security?*

It depends on the statute and on whether or not your mortgage contains a "power of sale"—a clause enabling the mortgagee to advertise and sell the property without going to court and getting its order to do so. If the mortgage is a power of sale mortgage, the mortgagee proceeds in this way. If it is not, he begins an action in court to foreclose which results in a court decree ordering the sale. The land is sold, the mortgage debt is paid out of the proceeds, the balance is paid to the mortgagor, the purchaser takes the land, but at any time within a period fixed by statute, the mortgagor can get back his land by paying the purchaser what he paid and some additional charges. The mortgagor's right to do this is called his "statutory right of redemption." There are still three other methods of foreclosure available if your statute allows them. The mortgagee may enter and take possession himself. Or the sale may be dispensed with, and the mortgagee himself take over the land. Or without interfering with your possession, he may simply advertise the foreclosure in the papers, and then, after the lapse of the period given you by statute to redeem without your doing so, he becomes the owner of the property, and your right to redeem is forever foreclosed or cut off. That is what the word foreclosure means—a method prescribed by statute or agreement for cutting off your right to redeem.

21. *Must you pay your other indebtedness to the mortgagee as well as the mortgage debt in order to redeem the property from the mortgage?*

No, unless the mortgage in terms secures such indebtedness.

22. *May your architect bind you by contracts which he makes for the work done and the materials furnished in the building of your house?*

Not unless you appoint him your general agent for all purposes connected with its construction. If he is employed merely to make plans and superintend the work, he has no authority to contract for the building.

23. *Who owns the architect's plans, you or the architect?*

Ordinarily you do, unless the contract of employment stipulates that the architect shall be the owner, which the standard form of contract published by the American Institute of Architects does.

24. *Is your architect entitled to be paid for the plans independently of whether you use them or not?*

He is if the contract so provides. But if the contract provides for payment only if the plans are satisfactory or are finally used, it must be shown that they are satisfactory or are finally used before he is entitled to compensation for them. Sometimes, a contract calls for superintendence and plans, and fixes the compensation for the entire job. Under such a contract, an architect who furnishes plans but refuses to go on with the superintendence cannot recover for the plans, unless you consent to or acquiesce in the refusal.

25. *If your architect's plan has not worked out as you expected it would, and it is due to some error or mistake in the plan, can you hold him responsible?*

If the error is due to lack of the care and skill which architects ordinarily have, he is liable. But not otherwise, unless he guarantees the result, and he generally does not.

26. *Must the contract for the building of your house be in writing in order to bind the contractor and you?*

No, unless it is not to be performed within one year, or unless the understanding of the parties is that it shall not be binding until reduced to writing. It generally is in writing, however, and should be because of the detail there is generally in it.

27. *How is your contract affected by the building regulations?*

It must conform to them. If a building permit is required, it must be secured.

28. *Is a stipulation that no deviation from any provisions of the contract, specifications or drawings will be permitted unless sanctioned in writing by your architect, binding?*

Yes, unless the requirement has been waived by you. This covers claims for extras unless the contract elsewhere provides for them.

29. *May you retain money due the builder to meet possible demands of materialmen, until he furnishes evidence that they have been paid?*

Yes, if your contract gives you a right to do so.

30. *If your contract provides for the forfeiture of a certain amount of money for each day's delay in completion of the work after a stated time, will such forfeiture be enforced by the courts?*

If the amount fixed is not disproportionate to the probable damage suffered by you from the delay, it will be enforced as "liquidated damages," that is, damages the amount of which has been fixed and agreed to in advance by you and your builder. But if it is out of all proportion to the amount of probable damage, the court will construe it as a "penalty," and penalties as distinguished from liquidated damages are not enforceable.

31. *If you delay the work, are you liable to the builder for loss he suffers from the delay?*

Generally, yes, if the delays are due to your failure to perform your contract obligations.

32. *Where your contract calls for performance by the builder "to the satisfaction of the owner," can you capriciously refuse to be satisfied and defeat his claim?*

No. Your dissatisfaction must be on reasonable grounds. If not, he can recover.

33. *If the builder follows your directions, is he responsible for defects arising out of doing the work your way?*

No.

34. *Where you furnish the materials and they are defective, is the builder liable to you for the damage resulting from the defect?*

No, unless he knows of the defective quality of the materials before he uses them and fails to call your attention to it.

35. *If your contract makes the payment of installments due thereunder conditional on securing the architects' certificate of work done, can the builder recover without the architect's certificate?*

No. But where the contract stipulates merely that the architect's certificate shall be conclusive evidence of work done without going further and conditioning payments thereon, the builder may recover without the certificates.

36. *Can the builder take his own time in doing the work under your contract?*

No. He must have it done within the time fixed by the contract, or if the contract fixes no time, within a reasonable time under all the circumstances. Any delay beyond such time will make the builder liable to you in damages, unless the delay is due to your fault or to some cause out of the builder's control and for which he is not responsible.

37. *What compensation is your builder entitled to for his work?*

If he has completely performed the contract, he is entitled to the amount fixed in the contract. If he has substantially performed it but in some details he has not, he is entitled to the contract price minus damages for the uncompleted details. If he has only partially, but not substantially, performed, he is not entitled to the contract price, but if he has worked with the bona fide intention of completing the job, he is entitled to the reasonable value of his labor and the materials furnished, subject to a deduction for damages sustained by you for failure to complete the work.

38. *Does the law give the workmen who have built your house and those who have furnished materials to go into it any security for the payment of their bills?*

Yes. And it does not matter whether they worked under contract or not. Anybody who contributed labor or materials to the building is entitled under the statute to a lien on the property, and that lien remains until the bill is paid, and it may be enforced, if necessary, by a sale of the property under order of the court.

39. *If you pay workmen in order to get rid of their liens or to prevent their filing them, can you deduct the amount paid from the contractor's bill, and reduce his lien, if he has filed one, by just that much?*

Yes.

40. *If proceedings to enforce his lien are not begun by the workman within the time prescribed by statute, does he lose his right to recover from you the amount of his bill?*

No. He loses his lien but that is all. He can still sue you to recover the amount of his bill.

CHAPTER XII

DOMICILE

Residence (1); Intent to Remain Indefinitely (2); Wife's Domicile (3); Extended Visits or Sojourns (4)

1. *In order to acquire a legal domicile at a particular place, must you live there in a house which you own?*

No. An abode of any kind is all that is necessary, provided you intend to make it your home. A rented house is enough.

2. *Must you intend to live there until you die?*

No. An intent to remain indefinitely is all that is required.

3. *May Amanda acquire a domicile separate and distinct from yours?*

Generally, no.

4. *Is your domicile in one place affected by a temporary residence somewhere else?*

No. Even though your temporary residence elsewhere extends into a period of years. Your intent is the determining factor. The place you regard as home is the domicile regardless of visits or sojourns however extended.

CHAPTER XIII

NEIGHBORHOOD ACTIVITIES

Liability for Church Debts (1); Your Withdrawing from the Church (2); Church Withdrawing from the General Church Organization (3); Church Subscriptions (4); Dismissing the Minister (5, 6); Pews (7); Purchase of Share in Local Golf Club (8); Club Dues (9); Liability for Club's Debts (10); Joining the Local Association for Improving the Condition of the Poor (11); Association Dues (12); Liability for the Association's Debts (13); Hospital for Contagious Diseases (14); Physicians Allowed to Practice in Local Hospital (15); Hospital's Right to Detain Patients (16); Hospital's Liability for Malpractice (17)

1. *If you become a church member, are you personally liable for the debts of the church?*

You are not if the church is unincorporated unless you authorize or ratify the debt. You are not if the church is incorporated unless the charter makes you so.

2. *May you resign your membership at any time you wish?*

Yes. Also you forfeit your membership by failing to abide by the bylaws if the bylaws so provide.

3. *May your church sever its connection with the general church organization of which it is a part whenever it wishes?*

It may where the general church organization consents, and it may without such consent, if it is shown that its connection with the general organization is purely voluntary, and there is no provision in the church rules prohibiting it.

4. *If you have subscribed towards the payment of the church debt, can you pay your subscription to the minister and will his signed receipt release you from further obligation?*

No, you are still liable on your subscription unless the trustees of the society have authorized the minister to accept payment. If their only authority to him is to solicit subscriptions, you should not pay your subscription to him.

5. *May your church dismiss the minister before the expiration of his contract term?*

Yes. He has no right to occupy the pulpit after his discharge. But if the dismissal was without cause, he may recover his salary for the unexpired portion of his term.

6. *May your minister be removed for an essential change of doctrine?*

Yes. Also for willful neglect of duty and for immoral or criminal conduct.

7. *If your church should withdraw the hand of fellowship from you and Amanda, would that affect your rights as pewholders?*

No.

8. *If you contract with another for the purchase of his membership in the local golf club, and the latter refuses to deliver to you the membership certificate, have you a cause of action against him?*

Yes, but the damages you are entitled to recover may not be more than nominal—a few cents. Probably the share has not any market value; and even if the certificate had been delivered to you, you would not be entitled to the privileges of the club unless and until your application for membership had been acted upon favorably by the club.

9. *Are you liable to the club for membership dues which you have not paid?*

If the club is incorporated and the charter gives the club no power in express terms to levy assessments, you are not liable. Otherwise if the club has the power. If the club is unincorporated, its power to levy must come from the articles of association. If the power exists, you are liable for all arrears until you resign and your resignation has been accepted, or until your membership is forfeited for nonpayment of dues. If you receive notice that your membership will be forfeited on a certain date if your dues are not paid, and you do nothing further about it, you are not liable for dues accruing after that date.

10. *Are you personally liable for the debts of your club?*

If the club is incorporated, no. If unincorporated, no, unless you have authorized or ratified the debt.

11. *How can you become a member of an association?*

By the existing members agreeing to accept you into membership, and by your conforming to the articles of the association. An association is an unincorporated society, and its articles of association constitute its organic law. You cannot transfer your membership unless the association assents to the transfer.

12. *Can membership dues be collected from you by suit?*

Not unless the articles of association impose a personal obligation on you to pay.

13. *Are you personally liable for the debts of the association?*

It depends on whether the association is a business enterprise organized for profit, or noncommercial. If it is a business enterprise, you are liable. If noncommercial, you are liable if you authorized or ratified the debt. Otherwise not.

14. *Is it necessary to get the consent of the local authorities before a hospital for the treatment of contagious diseases can be established in your town?*

Yes, if the statute requires it.

15. *May hospital trustees refuse to permit physicians professing a certain system of medicine to practice in the hospital?*

Yes.

16. *Can a private hospital detain a patient against his will?*

No.

17. *Is a hospital liable to a patient for injuries sustained through the negligence of a member of the hospital staff treating the patient at the instance of the hospital?*

Yes.

CHAPTER XIV

NEIGHBORHOOD SERVICES

Regulation of Gas Companies (1, 3); Right to Gas Service (2); Liability of Gas Companies for Injuries (4); Governor Attachment (5); Regulation of Electric Companies (6); Electrical Service (7); Liability of Electrical Companies for Injuries (8); Regulation of Telegraph and Telephone Companies (9); Telephone Service (10); Censorship of Telegrams (11); Liability for Failure to Promptly Deliver Telegram (12, 13); District Telegraph Messenger Service (14); Death or Funeral Messages (15); Physician's Taking Your Case (17); Duty to Continue Visits (16); Duty to Tell You Your Troubles (18); Diagnosis and Treatment (19); Testing Out a New Treatment on You (20); The Doctor's Vacation (21); Operations (22); Writing Out a Wrong Prescription (23); Druggist's Right to Keep Your Prescription (24); False Labeling (25); Mistake in Filling Prescription (26); Food in Containers (27); Sale of Unwholesome Food (28, 29, 30); Adulteration (31); Selling Milk Below Grade (32); Use of Coloring Matter (33)

1. *Are gas companies subject to state regulation?*

Yes. Reasonable regulations protecting the public health and safety may be made by the legislature, or the power to regulate may be delegated to a municipality or to a public service commission.

2. *Have you a right to be served by the local gas company?*

Yes, provided you are within reasonable distance of the gas mains, and are equipped with pipes to receive the gas, and agree to comply with the company's reasonable rules and regulations.

3. *Has the state a right to control gas rates?*

Yes, unless the company's charter expressly exempts it from such control. Rate regulation may be by the state legislature, or the power to regulate may be granted to a municipality or to a public service commission.

4. *Does a gas company insure against injuries from escape or explosion of gas?*

No, unless it is obliged to do so by statute. In the absence of statute, it is liable only for its negligence, but it is held to a duty to use a degree of care commensurate with the danger involved.

5. *Have you a right to have a governor attached near your meter so that you may regulate the pressure of gas in your house?*

Yes, subject to the company's regulations as to installment.

6. *Are rates and charges for electric current subject to public regulation?*

Yes, subject to constitutional restrictions.

7. *What are the duties of an electrical company to consumers in the matter of service?*

It must furnish electricity in safe and convenient form, at reasonable rates, or at lawfully established rates, without unlawful discrimination, to all persons desiring it, within reasonable distance of its operating field, provided they agree to comply with the company's reasonable rules and regulations.

8. *Is an electrical company liable for injuries due to faulty insulation or to broken or fallen wires?*

Yes, if due to its negligence. Wires must be insulated properly where there is a reasonable probability of human contact, but not where no one could reasonably be expected to come. Broken or fallen wires must be repaired within a reasonable time after notice to the company.

9. *May charges for telegrams and telephone service be regulated by public authority?*

Yes, if the rates fixed are not unreasonable to the companies.

10. *Has a telephone company, merely because the telephone instruments are patented, a right to refuse the service to any one it chooses?*

No. Where it elects to use the instrument in a public service, it does so subject to the law applicable to all public service companies.

11. *What telegraph messages may a telegraph company refuse to accept?*

Messages couched in indecent language, or which on their face indicate that they are being used to forward some illegal or immoral purpose. A telegraph company may refuse to accept messages given to it orally, although if it does accept them, as it very generally does now over the telephone, it is held to the same obligations for transmission and delivery as in the case of written messages.

12. *Does a telegraph company by accepting a message guarantee its safe and prompt transmission and delivery?*

No, but it is liable for negligent failure to promptly transmit and deliver.

13. *Can a telegraph company in its contract make its liability for mistakes and delays conditional upon the message being repeated back to the originating station at an added expense to the sender?*

In most jurisdictions, no. In a few states, it may.

14. *Is a district telegraph company liable if its messenger makes a mistake or fails to deliver a parcel?*

Generally it is not liable except for negligence in the selection of the messenger.

15. *Can a sender of a death or funeral telegram recover damages for mental anguish caused by failure or delay in its delivery?*

In most states, no, unless it also results in physical injury.

16. *If a physician is called in by you and takes your case, must he continue his visits as long as you require attention?*

Yes, unless he gives you notice to the contrary or you discharge him. He must use care in determining when it is safe to discontinue treatment. If he stops sooner than he should and sooner than a physician of ordinary skill would think it wise to stop, he is liable in damages for any injury to you resulting therefrom.

17. *May a physician refuse to take your case?*

Yes, even though he is the only physician in town.

18. *If you are afflicted with an incurable disease, must your physician tell you so?*

If it is discoverable by the use of ordinary care and skill, he is liable if he does not discover it, and tell you, or some one for you.

19. *If your doctor makes a wrong diagnosis and gives you the wrong treatment in consequence, is he liable to you in damages?*

Yes, if his wrong diagnosis is due to his failure to use ordinary skill and care. But a wrong diagnosis is not actionable if it is not followed by wrong treatment.

20. *May your doctor experiment with you, test out some new treatment on you, or must he follow the established mode of practice in ailments such as yours?*

Generally, unless there is good reason for not doing it, he must use the established mode. If he tests out a new theory on you, he does so at his own risk.

21. *Can your doctor leave you at the critical point in your disease and go off on his vacation?*

Yes, if he arranges with another competent physician to take charge, and tells you that he is doing so.

22. *Can your physician operate on you without your consent?*

If you are in condition to give your consent, he must have it before he goes ahead. But a voluntary submission on your part is presumably a consent to the operation. Of course it is not necessary in an emergency case where it is impracticable to secure it.

23. *If your physician should inadvertently write out a wrong prescription for you and you die because of it, is he liable to your estate?*

Yes, and it is no defense that the druggist was also negligent in filling out the prescription. The doctor, of course, is not liable if the prescription was correct and the mistake was the druggist's.

24. *Can you get your prescription back from the druggist?*

Not the original, unless he ever refuses without reason to fill out the prescription for you. Then you are entitled to it, or to a copy of it.

25. *If your druggist gives you a harmful drug and labels the bottle by mistake as containing a harmless drug, is he liable to you for the resulting injury?*

Yes. You owe it to the druggist and to your neighbors to keep away from the prescription desk when he is putting up a prescription. He will gladly tell you about his fishing trip some other time.

26. *Is he liable for a mistake in filling a prescription?*

Yes, unless you were negligent in taking it. But you are required to use only ordinary care, and he is required to use the highest care. Again, keep out of the little back room.

27. *When food is sold in containers, how is the public protected in the quantity and weight and quality?*

By statutes requiring labels to state the quantity or weight and the ingredients, and providing penalties for their violation.

28. *Is your butcher or grocer liable to you if he sells you unwholesome food, and you suffer injury?*

Yes, if the sale was negligently made. And the liability is not merely to you, but to all who eat the unwholesome food.

29. *Is the manufacturer or packer or bottler liable to you for injuries caused by unwholesome food put out by them and sold to you by retail dealers?*

Yes.

30. *If you are injured from eating unwholesome food at a restaurant, can you hold the proprietor liable?*

Yes, if he prepared the food. If the poisoning came from canned foods, and the restaurant keeper exercised reasonable care in the choice of brands, your remedy is against the manufacturer.

31. *What are adulteration statutes?*

Statutes making it an offense to sell adulterated products, generally. The conspicuous products are foods and drugs. But the statutes cover other articles, as kerosene oil, cotton-seed meal, etc.

32. *When is the offense committed in the sale of milk?*

When it is sold below the grade or standard required by statute, as well as when foreign substances are added.

33. *Is the use of coloring matter an offense?*

It is if it tends to conceal inferiority or to mislead the purchaser as to the kind or quality of the article he is

purchasing. Darkening vanilla so as to make it seem stronger than it is constitutes the offense. Coloring kerosene oil red does not, as the quality is not changed and no one is deceived.

CHAPTER XV

CREDITORS

Action of Debt (1); Working for You without a Contract (2); Serving You Gratuitously (3, 4); Letting You Occupy without a Lease (5); Lending You Money (6); Somebody Else Paying Your Debt (7); Money in Your Hands Belonging to Somebody Else (8); Attaching Your Property (9); Attaching Your Property in Somebody Else's Hands (10); Securing Judgment against You (11); Forcibly Taking Your Property for Payment of Your Debt (12); Conveying Your Property to Somebody Else so Your Creditors Won't Get It (13-18); Paying Your Bill (19-24); Settling Your Dispute without Going to Court (25-30); Assigning Your Property to Somebody Else to Manage or Sell It and Divide it among Your Creditors (31-36); Settling with Your Creditors for Less than Full Payment (37)

1. *When can your creditor sue you in an action of debt?*

When you owe him a certain fixed sum, or when it can be reduced to a certainty from the contract between you.

2. *Can one who works for you without any agreement as to what you shall pay him recover compensation?*

Yes. If the circumstances are such as to indicate that the services rendered were to be paid for, and you accepted them, your promise to pay for them is implied in the law, and you must pay what the services are reasonably worth.

3. *Where you are being served by one voluntarily with no expectation of being paid for it, must you pay for the benefit received?*

No.

4. *If the services were rendered gratuitously, but the person who rendered them expected that you would provide for her in your will, and that was the reason why she worked for you, can she after your death recover against your estate the value of the services if you do not provide for her in your will?*

Generally, no. But if the services were rendered, not gratuitously, but under circumstances indicating that you both had in mind that they should be paid for, then your estate would be liable even though it appears that she did not expect to be paid until after you had died.

5. *Can your landlord recover against you if you occupy his house without a lease or without any understanding as to what you shall pay for it?*

Yes. You must pay him what it is reasonably worth in rent.

6. *If you borrow money from another person to be repaid "when convenient" to you to repay it or "when business picks up," can the lender ever sue you to recover it?*

Yes, after a reasonable time.

7. *If you were under obligation to pay money to another, as for example your rent to your landlord, and some one else paid it for you, can the one who paid make you pay him?*

Yes, provided he can show either that you requested him to pay, or that you afterwards ratified the payment, or that he himself was also under an obligation to make the payment, or that, although he was under no obligation to pay, he did pay to protect himself. In the supposed case, if one who sublets an apartment in the house you have rented pays your rent to the landlord in order to save himself from being evicted, he can recover from you in what is called an action for money paid.

8. *If you have money in your hands which really belongs to somebody else, or if you had property belonging to him and have converted it into money, can he recover it?*

Yes, in an action known as an action for "money had and received."

9. *What does your creditor seek to do when he places an attachment on your property before bringing suit?*

To secure a lien on your property as security for the payment of such judgment as he may recover against you. Generally, the statute permits it only when your creditor is bringing an action for the recovery of a sum of money or damages. It can only be secured on statutory grounds. Generally, it must appear that you have absconded, or that you have kept yourself concealed for the purpose of defrauding your creditors or avoiding service of process, or that you do not live in the state where action is brought, or that you have conveyed your property for the purpose of defrauding your creditors, or that you intend to do so, or that you are about to remove your property from the state, or are concealing it to defraud creditors, or that you were guilty of fraud in incurring the indebtedness in the first place.

10. *If your property which may be subject to your creditor's judgment is not in your possession, but in somebody else's, how does the creditor secure a lien on that to satisfy the judgment which he later expects to secure against you?*

By bringing what is called a garnishment proceeding against the person who has possession of the property. Of course, if the latter has a claim on the property superior to the claim of the garnishment creditor, that is not affected, but subject to that the property will be held thereafter to satisfy whatever judgment your creditor secures.

11. *Before your creditor can take your property forcibly from you to pay his debt, what is the first thing he must do?*

He must secure a judgment from the court. If the trial is by jury, the judgment follows upon the jury's verdict, or upon the court's findings if the case has been tried without a jury. If you do not appear in court to contest the case, your creditor will have what is called a judgment by default. If you acknowledge your liability, and do so in the proper form, your creditor can have a "judgment by confession" entered. Or if you and your creditor agree as between yourselves what the judgment shall be, for how much and on what terms, a "judgment by consent" will be entered. There are other forms of judgment but these are the principal ones.

12. *After your creditor has secured judgment against you, how does he get his money?*

By taking out a "writ of execution." A writ is an order of the court. A writ of execution is an order directed to an officer of the court to execute the judgment, to take into his possession enough of your property to pay the judgment, if he can find it, sell it if necessary in the way the court orders it to be sold, pay your creditor the amount due him on his judgment and pay the balance to you. You have a right, even then, if the statute gives it to you, to go to the person who purchased your property at the execution sale, offer him the amount required by statute, and redeem your property. You must redeem, however, within the time and in the way required by statute.

13. *If you convey your property to another to get it out of reach of your creditors, can they have the conveyance set aside by the court and the property applied to the payment of their claims?*

Generally, yes.

14. *Can your creditors reach your wages if you have made an assignment, which is allowed to stand, would defeat their claims?*

Yes, to the extent that they are not protected by the exemption statute. You will find the law on exemptions in the next chapter.

15. *Your life insurance?*

Yes.

16. *Is your conveyance void absolutely, so that no title passes to your grantee at all?*

No. As between you and your grantee it is a good conveyance and stands until the creditors elect to have it set aside.

17. *What must your creditors prove in order to have your conveyance set aside?*

If they can prove that it was a gift, that is enough. In that event, no proof of fraudulent intent is required. In other cases, such proof is required. But it is not necessary to carry it to the point of proving a corrupt or dishonorable motive on your part. It is enough to prove that the effect of the conveyance was to hinder, delay or defraud your creditors, regardless of your motive in the matter.

18. *What would be the circumstances relied upon by your creditors to show to the court that your conveyance was in fraud of their rights?*

A fictitious or inadequate consideration; a false statement with reference to the conveyance; secrecy or haste; failure to record the deed; your insolvency—these and others are regarded usually as “badges of fraud” by the court.

19. *Have you paid your creditor if you deposit the amount of his bill in the bank to his credit?*

No, unless he has consented to your paying the bill in that way, or has accepted the deposit as payment.

20. *If you remit by mail and the creditor never receives your letter, have you paid him?*

It depends on whether he authorized you to send the money by mail, and then if he authorized you to remit by registered mail, whether you mailed it in the way required. If it is the usual course of dealing between you and your creditor to make payments by mail, an authority from him for you to continue the practice will be implied. Where the authority is established, the payment is made as soon as the letter is mailed.

21. *Have you a right to pay your bill in installments?*

No, unless your creditor consents to such an arrangement.

22. *If you make your payment conditional, have you paid your bill?*

No, unless your creditor accepts it as a discharge of your indebtedness.

23. *Have you a right to direct your creditor to apply money you send him in payment of certain items of your indebtedness, leaving others unpaid?*

Yes. And if your creditor accepts it as payment under those conditions, he must apply it as you direct. Of course, he can refuse to accept it.

24. *If you send money to your creditor without any directions as to how to apply it, can he apply it as he wishes?*

Yes.

25. *If you deny that you owe your creditor anything or what he says you owe him, and you can come to no agreement with him as to what you do owe, is there any way of settling it without going to court?*

Yes, by agreeing upon some outsider to hear both sides and decide for you. You can provide in your agreement that such a decision will be final, and that you both will

abide by it. In some states there is a statute which allows the decision of the arbitrator to be entered on the court records as a judgment, and enforceable as any judgment by execution. This method of settling disputes does away with all delay, technicalities and appeals, and costs are within your control. If the arbitrator serves without a fee, the costs are practically nothing.

26. *What is the essential to a valid award?*

The agreement between you and your creditor to submit. The terms of that agreement determine the binding force of the award.

27. *Is there any restriction on the person you can agree upon as arbitrator?*

Absolutely none.

28. *How are the proceedings before the arbitrator to be conducted?*

You can determine that yourself, if you want to, by providing for it in your agreement. If the agreement says nothing about it, it is within the discretion of the arbitrator. He can dispense with all technical rules that govern court procedure. The only requirement is that the proceedings be conducted honestly and fairly.

29. *Must the arbitrator's award be in writing?*

Not unless the agreement or a statute requires it.

30. *If instead of agreeing to let some one else settle your dispute for you, you and your creditor come to some agreement settling the matter yourselves, is such an agreement binding upon you both, so that the creditor cannot then sue you on the original claim?*

As soon as you have done what the agreement requires, it binds your creditor. Whether the agreement itself, before it is performed, prevents suit on the original claim depends on the terms of the agreement. If it provides that

the agreement itself, unperformed, shall operate as a settlement of the claim, the original claim is extinguished as soon as the agreement is made. Such an agreement is known as a "compromise and settlement." On the other hand, if the agreement stipulates that it shall not operate to extinguish the original claim until it has been performed, the original claim survives the making of the agreement and is not extinguished until the agreement has been performed. This form of agreement is called an "accord and satisfaction."

31. *Is it necessary to go to court and have yourself declared a bankrupt in order to secure a distribution of your property among creditors entitled to it?*

No. You can make an assignment of your property to a trustee to manage or sell it and out of the proceeds to pay the creditors who assent to it their claims, or pro rata, if the property is not sufficient to pay it in full.

32. *In making such an assignment, can you reserve to yourself a right to redeem the property, as you do when you make a mortgage?*

No.

33. *Can you stipulate in the assignment for a release of their claims from creditors who come in and share the property?*

You can in some states; in others you cannot.

34. *When you make the assignment, can you provide in the deed that the assignee shall pay to you out of it enough to support yourself and your family?*

No, unless the creditors assent to it.

35. *How are the rights of your creditors affected by your assignment?*

They cannot reach the property assigned on an execution against your property. Creditors who assent to it are entitled to an equal distribution of it among themselves

in payment of their claims. Creditors who do not assent are entitled only to the surplus remaining after paying the claims of those who do. On the ground that you have made an assignment, they may if they wish, commence bankruptcy proceedings against you. You may read more about this in the next chapter.

36. *After creditors have been paid out of the assigned property, are you entitled to be relieved from any further liability to them?*

No, if they have not been paid in full, unless they voluntarily accept the part payment as full satisfaction, or unless a statute entitles you to a discharge.

37. *If you are either insolvent or in embarrassed circumstances, so that your creditors are in doubt as to your ability to pay them in full, may you make an agreement with two or more of them which will be binding, whereby you agree to pay them less than you owe them, and they agree to accept it as payment in full?*

Yes. This is known as a "composition with creditors" and is based on agreement, while an assignment for creditors is a voluntary act on your part only, and is not binding on creditors unless and until they agree to be bound.

CHAPTER XVI

HOMESTEAD, EXEMPTIONS AND BANKRUPTCY

Protecting Your Home against Claims of Creditors (1, 2, 3); Amanda's Rights after Your Death (4); Protecting Whatever Is Necessary to Life and to Getting a Living against the Claims of Creditors (5, 6, 7); Cleaning the Slate and Getting a Fresh Start (8-13)

1. *Can your creditor take the house which you own and where you and Amanda live, to satisfy his claim?*

No. It is exempt up to the amount allowed in your state statute. Generally the statute requires that you must have selected the part of your property you wish to have exempted in this way, and you must have dedicated it to homestead purposes.

2. *Can you select and dedicate to homestead purposes any property you own up to the statutory limit?*

Generally, no. You can only select that part occupied as your family residence, both land and house.

3. *Can you set up your homestead exemption against every sort of claim, no matter how or when it came into existence?*

If your constitution so provides, you can. But in the absence of such constitutional provision, the legislature may provide, and often does, that certain kinds of debts you must pay anyway, even if it takes your homestead to do it. Such, for example, as the purchase price of the homestead itself where you have not paid for it all yet; debts due for necessities; and, in some states, claims already existing when you select and dedicate your homestead. This would

seem to reduce quite materially the value of the homestead exemption. But at any time by selecting and setting apart your homestead, you can defeat the holders of subsequently accruing claims in their attempt to reach the homestead property.

4. *When you die, can Amanda and the children still claim homestead rights in the old home?*

Yes, where the constitution or the statute so provides.

5. *Can your creditor seize all of your personal property if necessary to satisfy his judgment?*

No. The constitutions or statutes generally would protect you. As the homestead is designed to give the family a home, so the personal property exemption—it is called “exemption” in law as the other is called “homestead”—is designed to give the head of the family, secure from his creditors, the means of earning a livelihood. The statute limits it in amount and in the kind of property exempt. It usually includes household goods and furniture, food and provisions for the support of the family, the family clothing, working tools, stock in trade if you are a merchant, wages and salary to a limited amount and life insurance. Not all of these are exempt in each state. You must refer to your state statute to be sure.

6. *Is every debtor entitled to this privilege?*

Generally, only residents of the state. And it depends on the terms of that statute who, among its residents, are entitled. Generally, it is the “head of the family” or “householder.” Sometimes it is restricted to laborers or to persons engaged in particular occupations.

7. *Is your exempt personal property secure from every kind of a claim?*

No. Here, as in homestead, there are certain claims enforceable against even the exempt personalty. Generally, a claim for the purchase price of the article claimed as

exempt belongs in this class. Also necessities. Other claims, including rent, generally, cannot be enforced against the exempt property.

8. *If your debts exceed your resources and you see no prospect of a change, does the law provide a way of taking hold of the situation as it is, giving you a chance to start fresh, free of debt, and protecting your creditors not only against you but against each other, so that all will fare equally well in the distribution of all that there is to meet their claims?*

Yes. A way is open either to you or to your creditors. You may file a petition for a discharge from your debts. They may file a petition for a distribution of your property among those entitled to it. The first is called "voluntary proceedings in bankruptcy." The second is called "involuntary proceedings in bankruptcy."

9. *What effect does the filing of a petition have on your right to dispose of your property?*

You cannot transfer it after that. If you do, the transfer will be set aside if the trustee in bankruptcy, afterwards appointed, wishes to have it done.

10. *Has the court a right to take possession of it at once?*

Yes, if necessary to preserve it.

11. *What follows the filing of the petition?*

Notice to parties interested, a hearing, and, if the facts warrant it, an "adjudication of bankruptcy"—a judgment of the court that you are a bankrupt.

12. *After the adjudication, then what?*

The appointment of the trustee, the vesting of the title to your property in him, his administration of your estate, the distribution of it among those entitled, the accounting and discharge of the trustee, and finally the order of court discharging you from your debts.

13. *On what grounds will the court refuse to give you a discharge?*

Your taking a false oath at any time in the proceedings, concealment of your financial condition or of your assets, fraud in contracting debts, fraudulent transfer of your property, or a refusal to answer questions or to obey the orders of the court.

CHAPTER XVII

HOLIDAYS, SPORTS AND SHOWS

Holidays (1); *Saturday Afternoons* (2); *Holiday Falling on Sunday* (3); *Signing Documents on a Holiday* (4); *Fishing Private Streams* (5); *Fishing in Large Rivers and Lakes* (6); *Hunting on Private Lands* (8, 9); *Fishing and Hunting Regulations* (7, 10, 11); *Regulating Theaters, Moving Pictures and Shows* (12); *Refusing to Sell You a Ticket* (13); *Ejecting You and Amanda from the Theater after You Had Bought Your Tickets* (14); *Keeping You Out of All the Shows* (15); *Prize Fighting—What Is It?* (16); *Your Going to the Fight and Being Convicted of Manslaughter* (17); *Poker* (18); *Betting on the Races and Some Light on Election Bets* (19)

1. *What makes a legal holiday?*

Either a statute or a universal observance of the day amounting to a common law custom.

2. *Is Saturday afternoon a legal holiday?*

It is so designated by statute in a few states.

3. *Where a legal holiday falls on Sunday, is the following Monday a legal holiday?*

Not unless a statute expressly makes it so.

4. *Can you make a valid contract or sign a note or a check on a holiday or on a Sunday?*

Yes, unless the statute prohibits it. Generally the statute prohibits certain acts. Acts not within the prohibition may be performed on a holiday or on a Sunday the same as any other day. You must consult your state statute to be sure.

5. *Does your possession of rod and line and fisherman's license give you a legal right to fish any unnavigable stream you wish to explore?*

No. The owner of the land through which the stream runs owns exclusively the fishing rights therein. You are a trespasser if you fish that stream, unless the owner has made a grant of the right to you, or permits you or the public to use it. But the public can acquire no right to fish there. Nor can such a right be claimed by custom. It can be acquired by prescription, but only if there is an uninterrupted and exclusive enjoyment of the right. The use you make of it—a temporary use and only once a year—can never ripen into a prescriptive right.

6. *Does the same rule apply to navigable streams and great ponds and lakes?*

No. There the public have a right to fish even though owners on the banks also own the bed of the stream.

7. *May the legislature make regulations as to the time and manner of fishing which will control owners of unnavigable waters fishing in their own streams as well as the public fishing in navigable streams?*

Yes. It may fix a closed season when nobody can fish. It may prohibit fishing with nets or wiers or explosives. It may prohibit obstructions in streams to stop the progress of migratory fish, or the pollution of a stream, or trespassing on private enclosed lands on which proper notices forbidding fishing have been posted.

8. *How can you acquire hunting rights on private lands?*

By grant, lease or prescription.

9. *Can the public acquire hunting rights on private lands?*

No. They may hunt there if the owner permits them. But they have no legal right to do so. And hunting by permission, or by the owner's acquiescence, not being ad-

verse to the owner's title, can never ripen into a prescriptive right.

10. *Can the legislature make regulations restricting hunting rights in particular localities of the state?*

Yes, but it cannot give the residents of a single county hunting rights which it does not allow to other residents of the state.

11. *What are some of the most common game regulations?*

Close season for different kinds of game; hunting methods, prohibiting floating batteries, machine guns, and spring traps, or the hunting of deer with dogs; regulations for transporting and exporting game out of the state, and for hunting on enclosed lands; and requirements for hunting licenses.

12. *What are two of the legal questions involved in the regulation of theaters, moving pictures and shows?*

Is a particular regulation a reasonable exercise of the police power? Does the regulation apply to a particular enterprise? For example, a statute prohibiting the sale of theater tickets at more than office rates has been held to be unreasonable and void; and a dancing school has been held not to be a public show requiring a license.

13. *Is a theater private property which the owner can manage in any way he chooses subject only to police regulations of the state, or is it more of the nature of a public service as the railroad, telephone and other public utilities?*

It is a private property merely. The proprietor may discontinue performances and the public cannot complain. He can admit, and refuse to admit, any one he pleases. If you apply for a ticket, and he refuses to let you have it, you have no cause of action against him.

14. *You are a dramatic critic, and have severely criticized a particular show. Nevertheless, Amanda evincing a*

natural curiosity about the goings-on there, you buy tickets and take her. You come in from the country that night at considerable expense. After being admitted, you are approached by the head usher and informed that you will not be permitted to stay, and are requested to leave at once, and you and Amanda go. Have you a cause of action against the proprietor?

For a breach of your contract, yes. You can recover the price of your ticket, and the expense you have been put to in coming. Whether you can also recover damages for humiliation and disappointment, depends on whether you had reached your seat and taken it before you were ejected. Up to that time your ticket is merely a revocable license, giving you no right to recover for humiliation if ejected. If ejected after taking your seat, you can. In either case, if they handle you roughly when you are willing to leave without resistance, you can recover for the rough handling.

15. *If a number of theater managers in the city take measures to discipline you and refuse you admission to any of their shows, are they liable to prosecution under a statute making it a misdemeanor for persons to conspire to prevent another from exercising a lawful trade or calling?*

It depends upon the managers' intention. If they intended to put you out of business as a theatrical critic, they are liable under the statute as it is worded. They are not liable if they did it merely because they disliked and disapproved of your writings.

16. *What constitutes the offense of prize fighting?*

It depends on the wording of the statute. If it penalizes "fighting," it is not necessary that the fight be for a prize. It is necessary where the statute prohibits "prize fighting." If the statute prohibits "public fighting," then the fight must have been a public one. In all, the intent of each fighter to do physical violence to the other is an essential.

17. *Are spectators guilty under the statute?*

Not if they keep very still and do nothing to encourage either of the fighters. If they do, a statute making "encouraging" an offense, takes them in. If one of the fighters is killed, under an English statute everybody is guilty of manslaughter in the second degree. Unfortunate Mr. Hargrave, who attended such a fight, was sentenced to "fourteen years' transportation."

18. *If you deal a hand of poker for drinks or cigars for the crowd, or to see who will pay for the dinner, are you guilty of the offense of "gaming"?*

Yes, even though the agreement was that the loser was not bound to treat unless he was perfectly willing to do so.

19. *When your horse wins, can you recover your bet from the loser?*

It depends on the state you are in—and apparently on the state of the public conscience at the particular time you make the bet. It is not different from other gaming contracts which are held not enforceable, but horse racing is different—or is when people want to think it is—and some betting contracts in some states at some times have been enforced. If you happen to be interested at this moment in election bets, turn to Chapter XL.

CHAPTER XVIII

AUTOMOBILES, INNS AND HIGHWAYS

Traffic Regulations (1, 2); Failure to Register in Other States (3); Paying Your Repair Bill (4); Recovering against a City for Injuries Caused by a Defective Highway (5); Colliding with a Silent Policeman (6); Driving a Car with Poor Brakes or Other Defects (7); Driving on the Left (8); How Much Do You Have to Pay When You Damage Another's Car (9); Municipal Filling Stations (10); Conviction for Murder or Manslaughter (11); Public's Right to Use of Highway (12, 13); Regulating Heavy Traffic (16); Guideposts (14); Keeping Highways in Repair (15); No Funds for Repairs (17); Ordering Taxpayers Out to Work on the Road (18); Your Right to be Accommodated at the Inn (19); Inn's Liability for Things You Lose There (20); Inn's Liability for the Diseases You Get There (21); Inn's Right to Hold Your Baggage until You Pay Your Bill (22); Deadbeats (23)

1. *Are all traffic regulations necessarily binding?*

No. To be binding, regulations must be reasonable and definite. If the statute provides a standard to which you must conform, it must be a very definite standard, so that you can tell exactly whether you are conforming or not. A statute prohibiting "lights that blind" affords no such standard. Among lights that blind are some not so bad and others that are fiends on the road. Lights may blind on a wet night that won't at any other time. You cannot tell when you are guilty under a statute so worded.

2. *When state and municipal speed regulations are in conflict, which must you obey?*

The state regulations. But what you think is a conflict

may not be one after all. A city regulates traffic through the city's streets at fifteen miles an hour. The state's regulations permit a higher speed. But do they apply to city streets? If not, there is no conflict and you must obey the city's regulations. City and state traffic regulations affecting the same traffic unit may conflict. Otherwise not.

3. *If you are spending your summer in some neighboring state where you are required to register your car and you do not, what happens?*

A fine is the usual penalty. In one state, Massachusetts, you are regarded as a trespasser on the road and cannot recover for injuries received from another's negligent driving, although you may if the other driver was guilty of inflicting injury wantonly, recklessly or willfully. Even trespassers are protected to that extent. In other states, however, failure to register does not prevent your recovering for injuries resulting from another's negligent driving.

4. *Can the garage man hold your car until you pay your repair bill?*

Yes.

5. *If you are injured while driving over a city street because of some defect or obstruction, can you recover damages against the city?*

Yes, provided the defect or obstruction could have been remedied by the exercise of reasonable care and diligence and provided further that no negligence of yours contributed to the accident.

6. *Is a traffic guidepost or silent policeman an obstruction within the meaning of this rule?*

No, unless it is placed in an inconspicuous place where perhaps you could not see it until you had come upon it. When it has been knocked over by a car, it becomes an obstruction if the city does not remove it with reasonable despatch.

7. *If you are driving a car with poor brakes or some other defect and you injure somebody, are you liable?*

The question cannot be answered yes or no. The first thing to know is whether the defective condition was the real cause of the accident. If it was, and the defect was in violation of some regulation as to equipment, then you are liable unless you can escape liability by showing that the other's negligence also contributed to his injury. But even if there is no statute in the case, you still may be liable and will be if the defect was so bad and so obvious that the jury will take the view that you were guilty of negligence in driving a car in that condition on the streets without having it fixed up.

8. *If a statute requires you at all times to keep to the right, are you ever justified in turning to the left?*

You may turn to the left to save a life, or to avoid an obstruction. Street-car tracks may occupy half of a wide road, and you may follow the stream of traffic over to the left side of the road. Pretty nearly the entire law of liability in operation of a car is involved in this question and answer. You must drive carefully. You must obey regulations. Your conduct may, however, be justified by the situation or emergency you are in. When you have appraised your own conduct and have pronounced it undeniably bad, you still ask yourself two questions: Was your conduct, bad as it was, the cause of the accident? Was the other fellow also guilty of negligence contributing to his injury? If you answer the first question yes, and the second no, and if at the trial the jury takes the same view of it, you are liable. But if on any of these points the jury decides differently, you escape liability.

9. *If the case goes against you on liability, what must you pay the other man on account of his damaged car?*

Cost of the car's restoration to its original condition, that is, its condition just before the accident took place.

If it is not quite so good after it is repaired, then depreciation in market value. Charge for towage, possibly storage. Under certain circumstances, damages for loss of use.

10. *Can a city establish its own filling stations?*

Yes, if its charter permits. Private filling stations cannot complain on the ground that their property is being taken from them without due process of law.

11. *Are you guilty of murder if you run over a man and kill him?*

You may be and without realizing it. To you a murderer is a depraved individual who deliberately plans his crime. It is not always done that way. A burglar breaks into a house, not to murder but to steal. He carries his pistol intending to use it if he has to. He is surprised and shoots and kills. He is guilty of murder. You drive your car at reckless speed through a crowded thoroughfare with an utter disregard of life. You do it intentionally, meaning not to get out of anybody's way. People scatter, but one falls under your car and is killed. Your intent to drive in that way and then doing it with those consequences, make you a murderer in the law.

12. *Can the public acquire the right to a road as a public highway merely by using it?*

Not unless it has used it continuously as a public road for twenty years and adversely to the rights of the owner of the land over which it runs. If the public use of the road is by his permission, or is merely an occasional use, the public does not acquire a prescriptive right.

13. *In what other ways can the public acquire a right to use a road as a public highway?*

By the owner of the land making a dedication of it to the town and the town accepting it. Or by the town taking the land under a statute.

14. *Must the town place guideposts at crossroads?*

In some states, yes.

15. *Can a town be compelled to keep a town highway in repair?*

Generally, yes.

16. *May towns regulate the use of their highways by heavy trucking?*

Yes.

17. *Is a town liable to one injured on a road out of repair, where it had no funds in the treasury out of which to make repairs?*

Yes, unless it also appears that there was no way available to the town officers to raise the funds, and that there was no other way open to them to have the repairs made except by the use of town funds. The law does not require the impossible but it does require town officers to exhaust every resource available to them in order to make the town roads reasonably safe for travel.

18. *Must taxpayers work on the road themselves when ordered to do so by the road officers?*

If the statute authorizes it, yes. Otherwise, no.

19. *When at the end of the day's run you go to an inn for the night, have you a legal right to be received and entertained as a guest, or may the innkeeper, like the proprietor of a theater, refuse to let you in?*

You can demand a room if he has it to give, if you are able and ready to pay the price, and if you can qualify as an unobjectionable person. There is one other qualification. You must be a transient and not merely a resident of the town where the hotel is.

20. *Is the innkeeper liable to you if things that belong to you are stolen or lost while you are his guest?*

Generally, yes, unless the loss was due to your negligence or failure to comply with the reasonable rules of the house

as to the custody of such articles. A rule that the innkeeper will not be liable for valuables unless they are deposited in the office safe relieves him of liability provided you had knowledge of the rule. But the rule does not apply to articles you need to keep by you, clothing and articles of daily use. And it only covers articles which the language of the rule naturally applies to. "Valuables" does not include money.

21. *If a guest at the inn is sick with a contagious disease, and the innkeeper fails to warn you, is he liable to you if you contract the disease while at his inn?*

Yes. It is his legal duty to protect you while you are there and he must use a high degree of care to see that you come to no harm. But he must be shown to have been negligent in some respect to make him liable. He does not insure the safety of his guests.

22. *Has the innkeeper a lien on your goods which you bring to the inn as security for the payment of the inn charges?*

Yes.

23. *If you secure a room and food at an inn with no intention of paying for it, can you be prosecuted criminally?*

Yes, wherever the statute makes it an offense.

CHAPTER XIX

LIBERTY AND PRIVACY

Arrest with or without Warrant (1); Arrest in Civil Actions (2, 3); Constitutional Provision Forbidding Imprisonment for Debt (4); Arresting Tom for Failure to Pay Alimony to Henrietta (5); Giving Bail with Sureties (6); Right of Sureties to Arrest You (7); Delivering You into Court and Discharge of Sureties (8); Creditor's Threat to Arrest You (9, 10); Illegal Arrest (11); Kidnapping—What Constitutes the Offense (12); Tom's Kidnapping His Own Child (13); Lunacy Proceedings (14-16); Commitment to Insane Asylum (17); Habeas Corpus (18-20); Constitutional Guaranties against Unreasonable Searches and Seizures (21); Searching You without a Warrant (22); Searching You with a Warrant but in Violation of Its Terms (26); Opening Letters in the Mail (23); Producing Books and Papers for Examination (24); Compelling Amanda to Testify against You (25); Damages You Can Recover if You Are Illegally Searched or Your Property Illegally Seized (27); Right of Privacy (28)

1. *Is a warrant of the court authorizing arrest necessary before an arrest for a criminal offense can be made?*

Generally, yes. A well-established exception is where an arrest is made for a felony or breach of the peace committed in the presence of the party making the arrest.

2. *Can arrest be made in civil actions?*

Yes, wherever state constitutions and statutes permit it. There is nothing in the Federal Constitution prohibiting it.

3. *What is the general rule as to arrest in civil cases?*

Generally under the statutes it is restricted to actions on a contract, and is not allowed in an action to recover damages for a tort. But sometimes it is the other way round, and arrest can be had in tort actions but not in contract actions.

4. *Does a statute authorizing arrest in civil actions violate a constitutional provision forbidding imprisonment for debt?*

No. But it can only operate to authorize arrest in civil actions other than an action to recover a debt, as, for example, an action for libel. The constitutional provision generally in express terms withdraws its protection from the debtor if he has been guilty of fraud in contracting the debt.

5. *Is Tom's obligation to pay alimony to Henrietta a debt so that he cannot be arrested in an action to enforce the payment of it?*

Yes. But he can be arrested in contempt proceedings if he refuses to obey the order of the court.

6. *If arrested in a civil action, how can you regain your liberty?*

By giving to the sheriff a bail bond signed by proper and sufficient sureties who obligate themselves to the payment of a certain sum of money if you do not appear in court at the time specified.

7. *May your surety arrest you at any time before the time fixed for your appearance in court?*

Yes. Ordinarily a warrant is not necessary.

8. *When they have surrendered you into court at the time fixed, are the sureties discharged from further liability?*

Yes.

9. *If a creditor threatens to have you arrested if you do not pay your bill, can you recover damages from him in an action for false imprisonment?*

No. There must be an actual illegal detention to constitute false imprisonment.

10. *Is it necessary, on the other hand, that the illegal detention should be accomplished by the use of actual force?*

No. But the circumstances must be such as to give you reasonable ground for believing that force will be used if you do not submit, and you submit for that reason.

11. *If you are arrested illegally for working on Sunday, and you sue to recover damages from the officer for false imprisonment, are you entitled to recover if the officer thought he was performing his duty in arresting you?*

Yes. Absence of malice is immaterial on the issue of liability, although it does have a bearing on the question of damages. If the illegal arrest was made maliciously, you can recover exemplary damages, something more than the mere compensatory damages recoverable in the case of illegal arrest without malice.

12. *Is it necessary to prove that force was used in kidnapping in order to convict one of the offense?*

No. What proof is necessary depends on the terms of the statute, but generally the offense has been committed if the control over the person kidnapped is secured by fraud, inveiglement or enticing and without his consent.

13. *Can Tom kidnap his own child?*

Yes, if the custody of the child had been awarded to Henrietta. In that event, to take the child away from her is unlawful detention and when he is removed to some other place, the offense of kidnapping is complete. If Tom

is entitled to the custody of his child, he cannot be held guilty of kidnapping.

14. *Where a person becomes insane so that he cannot safely be entrusted with the management of his property, how does the state protect him and his property?*

Any one having an interest in his welfare or property may file an application to have him declared a lunatic and a guardian appointed over his person and property.

15. *Do the commissioners or the jury personally examine the alleged lunatic?*

Yes.

16. *May one adjudged insane later have his sanity tested with a view to securing control of his person and property again if he is found to be restored to sanity?*

Yes.

17. *Does the guardian have a right to commit his ward to an insane asylum?*

Not unless and until the court makes an order committing him. The ward is entitled to notice and a hearing before an order committing him to permanent confinement is made.

18. *What is your remedy if you have been deprived of your liberty unlawfully?*

You apply to the court to issue a writ of habeas corpus directed to the officer in whose custody you are, to produce you in court, when a hearing will be had on the legality of your detention. Generally the writ is issued and the final disposition of the matter is made at the hearing held after the return of the writ. But sometimes the question is settled upon hearing of the application and before any writ is issued. It depends on the statute and on whether the application itself fully presents the facts.

19. *If at the hearing the court concludes that you are not being illegally detained and gives you back into the*

officer's custody, can you later bring other applications for a writ on the same grounds?

Generally, yes, unless a statute provides that you cannot. But even in these jurisdictions, a new application may be made on new facts or circumstances presenting a substantially different case.

20. *Will a Federal court issue a writ to test the legality of detention under the order of a state court?*

Not ordinarily. It may do so in an emergency case, where prompt action is necessary to secure your rights.

21. *Does the constitutional guaranty against unreasonable searches and seizures in both Federal and most state constitutions protect you and your house and property against all searches and seizures?*

No. Generally, however, before a search or seizure can be made, a warrant authorizing it must be issued by a court. That insures the reasonableness of the procedure.

22. *Can an officer suspecting you are carrying a concealed weapon, search you without a warrant?*

No, unless a statute in express terms authorizes it.

23. *Does the constitutional guaranty protect your letters against opening in the mail?*

Yes. They cannot be opened except under a warrant.

24. *Can the constitutional guaranty be used as a justification for a refusal to produce books and papers for examination by the United States Senate, grand jury or other government agency authorized to investigate?*

Generally, no.

25. *Can Amanda be compelled to testify in bankruptcy proceedings as to what you told her about your property?*

No. Searching Amanda in a way like that is held "unreasonable" as the Constitution uses the word.

26. *Can an officer searching your house with a warrant and seizing your property ever be held liable in damages?*

Yes, whenever he goes beyond the limits fixed by the warrant, or, in the search, does unnecessary damage or treats you and your family with too little consideration for your comfort and convenience.

27. *What are the items of damage?*

Injuries to property, to your feelings and character—where that is involved—and to the family's peace of mind.

28. *Does "minding your own business" and keeping out of public life and jail give you a legal right to prevent the use of your name and picture by another without your consent?*

In some states under the statute, you have a right "to be let alone" in this respect. Even where there is no statute, some states recognize your "right of privacy" and protect it. Other states, however, do not. Of course, if the publication is libelous, you have your remedy, but that is another matter. You can find out about that in the following chapter.

CHAPTER XX

CONDUCT AND REPUTATION

Torts as Distinguished from Breaches of Contract and Crimes (1); *Some Examples of Torts* (2); *Remedies* (3); *Damages* (4-10); *Liquidated Damages* (9); *Exemplary Damages: Giving Away the Excess to Charity or Your Wife* (10); *Your Liability for Your Negligent Act* (11); *Do's and Don't's for the Absent-Minded Professor* (12, 13); *What Happens When You Trespass on Your Neighbor's Land* (14-18); *Forced Landings in Private Gardens* (8); *Making a Nuisance of Yourself and of Your Property* (19, 20); *City and Village Annoyances: The Subway* (21); *Barking Dogs, Stinging Bees and Roaring Bulls* (22); *What Can Your Neighbor Do about It?* (23); *Deceiving Another and the Penalty* (24); *Difficulty of Proving Fraud* (25); *How to Keep Yourself Out of Trouble* (26); *Gossiping and the Consequences* (27); *The Danger in Joking* (28); *Some Awful Things to Say* (29); *When You Didn't Mean to Say It* (30); *When You Call Him a Liar and No One Hears It* (31); *Apologizing* (32); *If What You Said Was True* (33); *Privilege: Domestic Servants and Senators* (34); *What You Must Pay for the Privilege of Speaking Your Mind* (35); *Your Liability to Prosecution* (36); *Repeating Gossip* (37); *Pictures as Libelous* (38)

1. *What does the word "tort" mean?*

A wrong. It is a technical word and not in common use. But we have the word "tortious." So it is not difficult to understand or to remember the meaning. Generally speaking, whenever you have invaded somebody else's right which the law protects you have committed a tort. There are two classes of wrong which are not torts. Breaches of

contract rights are not torts. And where the invasion of an individual's right is also a wrong against the public, the act is a crime and not a tort.

2. *What are the commonest examples of torts?*

Negligence, nuisances, conspiracy, assault and battery (the civil action in which damages are recoverable), false imprisonment, seduction, libel and slander, trespass, fraud, a third person's interfering with your contract rights with another or with your domestic relations. These are a few only. The subject covers a wide field. Wherever there are rights which the law protects, their invasion constitutes a tort. There is an ancient maxim that "where there is a right, there is a remedy."

3. *If you are the victim of somebody else's tort, what is your remedy?*

In a few instances, the remedy is in your own hands. If you can do it peaceably without using force, you can take back the property that has been taken from you, either personalty or real estate. Generally, you can take trespassing cattle to your barn and keep them until their owner pays you the damage they have done. Generally speaking, you can tear down obstructions and abate nuisances. In court, you can recover damages, or have your property returned to you, or secure an injunction ordering the wrongdoer to discontinue his wrongful acts.

4. *Does the fact that another has suffered injuries at your hands make you liable to him in damages?*

If you have violated no right of his, you are not liable.

5. *On the other hand, if you have violated a right of his but no actual damage is shown, must you pay him damages?*

Yes. Nominal damages only, however. Nominal damages are given also where actual damage is shown but from its nature cannot be exactly ascertained.

6. *If your victim is actually benefited by your wrongful act, must you pay him damages?*

Yes, but nominal damages only.

7. *If he suffers actual loss, how much must you pay him?*

Whatever the jury thinks is required to make good the loss inflicted.

8. *Must you pay for every loss that follows after your wrongful act?*

No. Only for such loss as can be said to be the natural and proximate consequence of your act. If on the first flight after receiving your pilot's license you land in somebody's private garden, unannounced and uninvited, and a crowd breaks through fences and over fields to reach you, you are liable for all the damage you do, and, possibly, for all the damage they do too. But a jury determines the matter under the instructions of the court, and circumstances alter cases.

9. *May you and the party to be injured by your wrongful act agree in advance what you will pay him for the injuries he receives when he receives them?*

Yes, if they are not out of all proportion to the loss suffered. They are called liquidated damages. Such a provision is made in contracts and fixes the damages for a breach. It is especially applicable where otherwise the amount of the loss would be uncertain and difficult to ascertain. If the sum fixed is out of all proportion to the loss suffered, it is regarded as a penalty and not recoverable.

10. *Can you ever be made to pay damages in excess of the amount required to compensate for loss suffered?*

Yes, when you act willfully or wantonly or recklessly. When you act this way, it is said that you are sinning against society and you may be punished for doing so. The

punishment takes the form of an extraordinarily large verdict against you, thereby punishing you, warning others and incidentally benefiting the fortunate sufferer far beyond his loss, and perhaps beyond his expectation. When this happens, he is liable to turn it over to charity or to his wife.

11. *If, through your negligent act, you inflict personal injuries or a property loss upon another, must you pay him money, and, if so, how much?*

You may be liable, and, if you are, you must pay him the amount awarded by a jury as compensation for the loss he has suffered. Before he can recover, he must prove certain things, and the burden is on him to prove, not on you to disprove them. These things are the facts giving rise to your duty to exercise care towards him, your act, the circumstances making it negligent, the facts indicating that it was the real cause of his injury or loss, and the facts showing that he did not contribute to it in any way by his own carelessness.

12. *What are some of the things you must and must not do to escape liability if some one else should sue you for injuries resulting from your negligent act?*

You must drive your car carefully. You must be very careful where there is any chance of injuring children. Don't have anything on your premises that will attract them and on which they are likely to get hurt if they play on it or near it. If you are an employer, see that your employees have a safe place to work and safe tools to work with. Guard against fire. If you own a large building, or a small one for that matter, on a highway, take precautions against things falling from the upper stories on to the sidewalk. Have your elevators inspected regularly. Employ competent elevator boys and girls. These are a few of the do's and don't's in negligence cases. "Safety first" is the rule to follow.

13. *What are the things you must and must not do in order to recover from somebody else for his negligence?*

You must not give him a chance to say that you were not driving your car carefully. Avoid places you know are dangerous. If you have a choice in your conduct between a safe and a dangerous method, choose the way that is safe. Observe warnings and notices. Don't violate ordinances or statutes. Don't go on to another's premises unless you are invited there or are wanted there on business. At least, get permission to be there. Don't be a trespasser. Invited persons are entitled to the highest consideration; licensees to some; trespassers to hardly any at all. Wherever you are, "watch your step."

14. *If you commit a trespass on another's land, are you any the less guilty of a trespass because you did no damage?*

No.

15. *Or because you did not know that the other's land belonged to him, and intended no harm?*

This may have a bearing in the amount of the damages recoverable against you, but not on your liability.

16. *Or because you used no force?*

No.

17. *Where the land is in the possession of some one other than its owner, to whom are you liable if you trespass on it?*

To the one in possession.

18. *What are the damages recoverable against you?*

Nominal damages where no damage is done, or you repair the injury. Otherwise, compensatory damages for the harm actually done. If your trespass was willfully committed, then exemplary or punitive damages.

19. *When can you be held liable for creating or maintaining a nuisance?*

When you use your property in such a way as to cause another or the public at large substantial annoyance or inconvenience or harm. If you merely annoy some individual, the nuisance is a private nuisance. It becomes a public nuisance when the inconvenience or annoyance extends to the public.

20. *Are you responsible to another for the maintenance of a nuisance by merely violating some personal or property right of his?*

No. He must show some actual loss or inconvenience or annoyance suffered by him. In this respect nuisance differs from trespass. But like it, the intent or the malice with which you maintain the nuisance is immaterial. Nor is any question of negligence involved.

21. *If you live in the city or in a village, are you really liable for every little annoyance caused your neighbor?*

Certainly not. The little petty annoyances which are a necessary incident to city or village life cannot, of course, be classed as nuisances. But even in a city, and perhaps in a crowded subway, there is a limit.

22. *What is the limit? What are some of the things you can and cannot do?*

You cannot keep dogs which bark all day and howl all night; nor bees if they annoy others; nor bulls and let them go at large. You cannot set up a roller coaster in a quiet community; nor wake people up in the early morning with church bells and factory whistles; nor burn soft coal where the city tells you you mustn't; nor keep a pig in some communities; nor run an establishment which sends out offensive odors or harmful gases in a residential community. You can run a barbed wire fence along a railroad right of way but not through Main Street. You can have a cesspool but you must look after it. You can cook onions

and cabbage but you must be reasonable about it. You can play baseball unless you make yourself a nuisance by the way you do it. You can promote a prize fight in some places. You must be careful about letting your land to a gypsy camp or to a traveling show sharing its gambling rake-off with the local village charity.

23. *When you have created a nuisance and are still at it, what are your neighbors' remedies against you?*

Any one of them injured by it may stop it by his own act without going to court, and may use the necessary force in doing it, provided he does not commit a breach of the peace. He runs this risk if he does it this way. If what you have done isn't a nuisance, you may hold him liable in damages or prosecute him criminally if he has used force. If he wishes, he can go to court and get relief. The court will compel the abatement of any public or private nuisance. And he may recover damages for the injury you have done him.

24. *If you deceive another to his hurt, what is the penalty to you?*

You may be liable in damages. You may be deprived of your remedy which otherwise you would have against another. Instruments may be canceled or contracts or deeds set aside. Generally speaking, the wrong done will be undone and any loss or damage made good.

25. *Is fraud easy or difficult to prove?*

It is very difficult to prove. Your accuser must establish ten different things against you before he can recover: (1) Your representation to him. (2) Its falsity and (3) materiality. (4) Your knowledge of its falsity. (5) Your intention that he shall act upon it. (6) His ignorance of its falsity. (7) His reliance upon it and (8) his right to do so. (9) His act and (10) the injury resulting to him therefrom.

26. *What are some of the things you might do and lay yourself open to the charge of fraud?*

You might make a false statement to another as to your financial condition. Or you might recommend another as entitled to credit. You might conceal your insolvency. You might deceive another as to land you own, its location, area, boundaries or productiveness. Rents from real estate, profits from a business are important things in a sale, and you might overstate them to a point not warranted by the facts. Misrepresentations as to title or encumbrances are actionable. There is one common, everyday exception to this general rule. "Trader's talk" on values is not actionable unless there is some concealment of a material fact involved.

27. *If what you have said about your neighbor has injured his reputation in any way in the community where you both live, and you had no justification for saying it, can he sue you for damages and secure a judgment against you if he proves his case?*

Yes.

28. *Does it make any difference that you were merely joking at the time and did not intend it to be taken seriously?*

No, unless every one who heard it understood it was a joke, in which case there is no damaged reputation to repair. The fact that he comes out of his experience with a reputation for lack of humor is not laid at your door.

29. *What are some of the awful things you might say about your neighbor which you might afterwards regret?*

That he betrayed your confidence or was guilty of a breach of trust. That he is a coward. That he is cruel to his wife and children. That he is a dishonest rascal, a villain, a whelp, a liar and a hypocrite. That he does not pay his bills. And others.

30. *Can you justify your saying any of these things about your neighbor on the ground that you did not intend to do him any harm?*

No, because you probably have harmed him just the same. If you had spoken maliciously, you might have been obliged to pay exemplary damages. So when you say you did not mean any harm, if the jury believes you, you may hold down the damages somewhat.

31. *Are you liable if you tell your neighbor he is a liar when nobody else is near to hear you say it?*

No. The words must go outside the little friendly circle of accuser and accused. Election to the Ananias Club is not regarded as an honor until it is known.

32. *Does it help matters if you apologize?*

Not unless your neighbor accepts it as full reparation for all you have said.

33. *Do you escape liability if you are able to show that what you said was true?*

Generally, yes.

34. *Can you escape liability on any other ground?*

Yes, if because of the occasion or the nature of the communication, you can show that what you said was privileged. Perhaps the most common instance of a privileged communication is the giving of information about a former employee to one seeking it. What witnesses say in court, or legislators in the Senate or House, is privileged.

35. *When you have been found guilty of libel or slander, what are the items of damage recoverable against you?*

Injury to your victim's reputation and to his business or occupation. Mental and physical suffering. Even future loss or damages if not speculative or remote. Circumstances may operate either to mitigate or aggravate these damages.

36. *When are you liable for criminal libel?*

Whenever the statute makes you so, and generally that is whenever your words have a tendency to provoke a breach of the peace. If you hold your neighbor up to public ridicule or scorn, you are generally liable.

37. *One further question by way of postscript: Are you liable if you pass on to another a bit of slanderous gossip that has come to you from some one else?*

Yes. It is no defense that you were not the first one to tell it.

38. *Also: may a picture be libelous?*

Yes. Even a moving picture. One court has said, "A suit for libel based upon a moving picture production is a somewhat novel proceeding, but there is no doubt that if the production tends to bring a person into disrepute, it may give rise to such an action."

CHAPTER XXI

BEARING WITNESS TO THE TRUTH

Affidavits and Depositions (1); By Infants and Married Women (2); Affidavits as Evidence (3); Grounds for Taking a Deposition (4); Nature and Purpose of an Oath (5); Religious Tests (6); Perjury (7); Persuading Another to Perjure Himself (8)

1. *What are affidavits and depositions?*

When you have knowledge of certain facts and wish to make a written record of them and to give that record the force and effect of a sworn statement, you write out the statement, sign it and take oath before the proper officer that the statements made are true. That is also what you do in making a deposition, but the two are different in this respect. You make an affidavit voluntarily, without notice to any one else interested in the matter and without opportunity given to him to cross-examine you. When you are summoned to make the statement, and notice is given to your adversary and he has opportunity to cross-examine you, the sworn statement is called a deposition.

2. *Does an affidavit by an infant have any effect?*

Not if his mental capacity is such that he has no comprehension of what he is doing when he makes it. The same is true of insane persons. Married women, even though under disability in some respects, can make them.

3. *Can affidavits be used in a trial as evidence of the truth of the facts recited therein?*

Generally no, unless the parties interested consent. The reason is that there has been no opportunity for cross-examination.

4. *When can you be compelled to submit to the taking of your deposition?*

Only when the emergency for which the statute provides exists—generally, when you are out of the state where the action is being tried; or at a distance from the place of trial; or, in some states, when you are about to leave the state and may be absent when the case is tried; or when you are so sick or disabled or infirm that you cannot come to the court.

5. *Why are you required to take an oath before testifying?*

The theory is that the chance of your telling the truth is somewhat bettered if you solemnly ask God to punish you if you don't. A consideration of greater impelling force, perhaps, is your knowledge that if you violate your oath and are found out, you go to jail.

6. *Must you believe in any particular God or religion in order to take the oath?*

No. The religious test has been generally abolished.

7. *If after taking the oath to tell the truth, you testify falsely, what are the consequences?*

If you have done so with the knowledge of the falsity of your testimony, and the falsehood is on some material matter, you can be prosecuted criminally for perjury, and it does not matter that no one has been injured by your false testimony.

8. *Can you be prosecuted if you persuade another to commit perjury?*

Yes.

CHAPTER XXII

COURTS AND CONTEMPT

Jurisdiction (1); Necessity of a Real Case in Litigation before Court Can Act (2); Advisory Opinions (3); Pleadings and Notice to Adversary (4); Effect of Order of a Court Having No Power to Make It (5); Power of Judge in Chambers (6, 7); Judge Acting on Own Initiative (8); Interest, Bias or Expressed Opinions During Trial as Disqualifying Judge (9); Contempt of Court (10-12); Acting under Advice of Counsel (13); Intending No Disrespect (14); Punishment for Contempt (15); Obstructing Justice as a Criminal Offense (16)

1. *Are you entitled to carry your troubles to any court at all for settlement and have a hearing?*

No. The powers of courts to hear cases are restricted by the constitution or by the statute creating them. This restricted power is called the jurisdiction of the court, and your case, in subject matter and amount involved, must be within the jurisdiction of the particular court you take it to, else it cannot listen to you. All it can do is to tell you that you must go somewhere else to be heard.

2. *Has a court power to make a decision or offer an opinion on some abstract proposition of law where no rights of individuals before the court are involved?*

No. There must be a real case in litigation before the court.

3. *May the highest appellate tribunal in the state give advisory opinions to the legislature when asked?*

In a few states, it must do so whenever the legislature submits an hypothetical question for its determination.

4. *How does the court acquire jurisdiction of your particular case?*

It has jurisdiction over the action when pleadings are filed showing the case to be one within its power to decide. Its jurisdiction over the parties is complete when the defendant has been served with notice of the bringing of the action against him.

5. *Are you bound by an order of a court without jurisdiction?*

No.

6. *If you cannot take your case to a particular court because it has no jurisdiction, can you take it to a judge of that court in chambers and ask for a hearing?*

No.

7. *Can a judge act in chambers or in vacation on matters over which the court has jurisdiction?*

Not unless the constitution or statute gives him power to do so, which, however, it frequently does.

8. *Can a judge act on his own initiative whenever he deems it necessary for the promotion of justice?*

Yes. He can, for instance, order an investigation and prosecution of a witness if he believes that he is testifying falsely.

9. *When is a judge disqualified to act as judge in your case?*

When he has a direct pecuniary interest in it. Generally, when he is biased or prejudiced, or when he has acted as counsel in the case, or when he is related to either party. But the expression of an opinion during the progress of the trial, even in a criminal case, does not disqualify unless it shows bias or prejudice. Then it does.

10. *Are you guilty of contempt if you assume an insolent manner towards the court even though your words in other surroundings might be unobjectionable?*

Yes. Under such circumstances, you have offended, not against the court primarily but against the state.

11. *Are you guilty if your objectionable conduct takes place out of court?*

Yes.

12. *In what other ways is contempt of court shown?*

By disobeying an order of the court; by attempting to improperly influence a jury; by refusing to answer questions on the witness stand when ordered to do so by the court; by refusing to produce books for examination when summoned to do so; by tampering with the witnesses or suppressing testimony; or by publishing articles in the newspapers about cases during trial which might reasonably be expected to interfere with the orderly administration of justice.

13. *Can you justify your contempt by showing that you did it under the advice of your counsel?*

No.

14. *Or by showing that you intended no disrespect or that you did not realize that what you were doing would impede the administration of justice?*

No.

15. *What happens to you if you are proven guilty of contempt?*

You are fined or imprisoned or both at the court's discretion. You may be discharged with a warning, or on a condition which you are to perform. You are not punished to vindicate the judge or to aid your adversary. The sole purpose of the punishment is to maintain the power of the state in its administration of justice.

16. *When are you guilty of the offense of obstructing justice?*

Whenever you resist the execution of a court order or process; or fail to respond to an officer's summons to assist him in making an arrest unless such assistance would be futile and dangerous; or when you refuse to answer questions on the witness stand; or where you willfully prevent a witness from testifying, or attempt to do so.

CHAPTER XXIII

TRAINS, FERRIES AND SUBWAYS

When Are You a Passenger and When Not? (1, 2); Your Right to Be Carried (3); Your Right to a Seat (4); Rate Regulation (5); Buying Your Ticket on the Train (6); Who Can Use a Ticket and Restrictions on Your Use of It (7); Stop-Over Privileges (8); Redeeming Unused Tickets (9); Losing Your Commutation Ticket (10); Carrier's Liability for Personal Injuries (11); Subway Crowds (12); Ticket Containing Clause Limiting Liability for Injuries (13); Insuring Delivery of Goods (14); Street Railways and Ferries (15); Duty to Keep Ferry Going (16)

1. *When you leave the house in the morning to take your train to the city, at what moment of time do you become a passenger entitled to the protection that the railroad is under duty to give to all its passengers?*

When you reach the station ready to take the train.

2. *When does the railroad's duty towards you as a passenger terminate?*

When you have left the railroad's premises in the city.

3. *Must the railroad accept you as a passenger and sell you a ticket?*

Generally, yes. Under some circumstances, no. You have no right to demand a ticket to a particular place for a train which is not scheduled to stop there. If you are sick or infirm or intoxicated, it depends on how sick, infirm or intoxicated you are and whether some one is with you to look after you. If it is reasonably certain that you can get through without inconveniencing other passengers, you have a right to go.

4. *Have you a legal right to a seat?*

As a matter of pure, abstract, contract right, you have. The trouble is to get it. It does not follow from your legal right to a seat that if there is not one to be had, you are entitled to free transportation standing. Practically, therefore, if in all the train there is no vacant seat, you have an election to leave the train at the next station or to pay your fare and stand until you find one. A discussion as to legal rights to a seat under such circumstances would seem to be, therefore, largely academic.

5. *May the legislature regulate rates to be charged by railroads, ferries and other carriers?*

Yes. Or it may delegate this power to a public service commission or to a municipality. The power to regulate is subject to the constitutional restriction that the rate cannot be put so low as to amount to a confiscation of the carrier's property.

6. *When you buy your ticket on the train, can the railroad legally charge you a fee in addition to the regular fare?*

Yes, if you have had opportunity to buy a ticket at the station ticket office. But if the ticket agent did not open his office until a minute or two before train time and there was a long line ahead of you waiting for him to arrive and only a few got tickets and you did not, you are not required to pay the extra fee.

7. *Can any one ride on an ordinary railroad ticket whether he was the one who bought it or not?*

Yes. But if it is a special kind of ticket sold for a particular purpose at a reduced rate, a restriction against any one using it but yourself or your family is generally written into it as one of the terms of the contract. Such a restriction is reasonable and enforceable. Tickets sometimes contain limitations as to the time within which the

ticket must be used or restricting its use to particular trains.

8. *If you stop over at an intermediate station on a ticket good only for a continuous trip, and refuse to pay a second fare on continuing your journey, can you be legally ejected from the train?*

Yes. A stop-over privilege may constitute, however, one of the terms of your contract. The ticket you buy will tell you what your stop-over privileges are, and the conditions upon which they are granted.

9. *Can unused tickets be redeemed?*

They can be when the statute provides for it. Generally they cannot be in the absence of statute. Where redemption is allowed, only the purchaser of the ticket can redeem, and he may be required to sign a statement that he is the purchaser and why he did not use the ticket. This is to prevent persons buying up unused tickets at a discount and themselves redeeming at the full price.

10. *If you lose your commutation ticket, can you claim to be carried at the commutation rate for the remainder of the month?*

Not unless you purchase a new ticket. If the old one is found, it may be redeemed.

11. *Does a railroad insure you against all injury on your trip?*

No. But the law requires of railroads, ferries and all common carriers of passengers the highest degree of care. If, in a particular instance, a carrier fails in this duty, it must pay compensatory damages for all injuries inflicted, subject to the rules already stated in Chapter XX, that the injuries must have been caused by the negligence of the carrier and the passenger must not have contributed to them by his own negligent act.

12. *Have you any right to protection from the subway crowds?*

Yes. The carrier must use reasonable care to prevent overcrowding of platforms in the first place, and in the second place it must use reasonable care in furnishing a sufficient number of guards to control the crowd that is there. The same reasoning would seem to make it equally obligatory upon the carrier to use reasonable diligence in the devising of an adequate scheme for handling the crowds either by employing the wits of its own traffic experts or of others available. If the carrier fails in its duty to handle the crowds and you are injured, it is liable in damages.

13. *Can a railroad by contract limit its liability for injuries suffered by you while a passenger on its road?*

Generally it cannot do so with respect to injuries caused by its negligent acts. It may do so with respect to injuries caused in other ways than by its negligence, unless by constitution or by statute it is prohibited from doing even this.

14. *How about a railroad's liability in the carriage of goods, is the liability the same?*

No. The railroad insures the delivery of goods unless lost by act of God or a public enemy.

15. *Do the rules above govern street railways and ferries?*

So far as they are applicable, they do. All are common carriers. An exception exists—it is not an exception because he isn't a common carrier—in the case of a private ferryman who keeps a ferry for his own use and only occasionally takes others across.

16. *Must the grantee of a public ferry franchise keep the ferry in operation?*

Yes, to the extent of his power to operate under his franchise.

CHAPTER XXIV

THE NEWS

Discontinuing Your Subscription (1); Changing the Political Policy of Your Paper (2); Liability of a Newspaper for Libel (3); Liability for Comment and Criticism (4); Liability for Contempt of Court (5)

1. *When you notify your newspaper not to continue your subscription beyond the current year, are you liable if it continues to come?*

No.

2. *Has the editor of a newspaper a right to change the political policy of the paper without the owner's consent?*

No, unless the owner had already placed him in full control of the political policy of the paper.

3. *Is a newspaper liable in libel for publishing defamatory matter which is false if it does so in good faith, believing it to be true?*

Yes. A newspaper enjoys no privilege. The same liability attaches to it as to others in a community, and on the same grounds.

4. *Is a newspaper liable if it makes derogatory comments or criticisms on persons in its columns?*

No. Fair comment and criticism are not regarded as defamation in the law. But the proper place for them is in the editorial columns.

5. *Can a newspaper plead the constitutional guaranty of the liberty of the press and, on that ground, escape liability for contempt of court?*

No. It is liable for anything it publishes reasonably calculated to interfere with the due administration of justice.

CHAPTER XXV

BUSINESS AND BLUE MONDAYS

Your Personal Liability for Your Firm's Debts (1); On Its Contracts (2); For Its Losses (3, 4); Liability of Your Estate after Your Death (5); Joint Adventures as Distinguished from Partnership (6, 7); Getting Out of a Losing Adventure (8); Reason for Incorporating and Its Advantages (9); Nature of a Corporation and Its Powers (10); Nature of Your Interest as a Shareholder (11); Your Liability to Assessment (12); Your Right to Know What the Corporation Is Doing (13); Joint Stock Companies Distinguished from Partnerships and Corporations (14); Compelling Your Partner or Broker or Trustee to Account (15); Good Will as Property (16); Valuing Good Will (17); Selling Out the Old Business and Starting a New One (18); Purpose of a Trade-Mark (19); Nature of Your Right When You Have One (20); What You Must Do to Get One (21); Selecting a Trade-Mark (22); Your Protection against Unfair Competition (23); Making a Contract to Sell Goods (24); Changing Its Terms or Giving It Up (25); Delivering the Goods (26); Disappointing the Buyer (27); Auctioning Off Your Property (28); Wishing You Hadn't Done It (29); When Title Passes (30); Promising to Pay Your Friend's Debt (31-35); Promising to Make Good to Him Any Loss He Suffers (36)

1. *Are you, a member of a partnership, personally liable to firm creditors for the debts of the partnership?*

Yes.

2. *Are you personally liable on partnership contracts made by any one of your partners acting for the firm?*

Yes.

3. *When the partnership loses money, how much of the loss falls on you?*

Generally you share losses with your partners in the same way and to the same extent as you do the profits. What that share is is fixed in the partnership agreement.

4. *If the partnership loss was due to your conduct, do you have to bear the entire loss?*

No, if the loss was due to your error of judgment. Yes, if due to your recklessness or bad faith.

5. *If you were still a member of the partnership when you died, must your estate pay the claims of firm creditors?*

Yes, but generally not until your personal creditors have been paid in full.

6. *How is a joint adventure distinguished from a partnership?*

A partnership is formed to carry on a general business of a particular kind, while a joint adventure is confined to a single transaction, as for example the purchase and development of a particular tract of land for the timber or for residential purposes.

7. *Are you personally liable on contracts incidental to the enterprise and within its scope?*

Yes. The rule here is the same as in partnership, and the sharing of profits and losses are governed by partnership rules.

8. *If you see that the adventure is going to be a losing one, can you withdraw from it?*

No, unless you were drawn into it by fraud.

9. *When you have had your share of Blue Mondays, how can you stop the "personal liability" leaks in your business?*

By incorporating. A corporation differs from a partnership at almost every point, but the differences of greatest

practical value to you are the limiting of your personal liability and the possibility of a widely extended ownership, many shareholders in the place of a few partners, and the separation of ownership and management of the business frequently resulting therefrom.

10. *What are some of the essential features of a corporation?*

It is a legal entity, has a separate and continuous existence entirely independent of its membership, and a name. It is itself the owner of property, has a capital, and is sometimes said to have no soul. It can sue and be sued in its own name as other creditors and debtors with names. Like a natural person it acts when it has the will and power to do so. But after all it is an artificial person, a creature of the law, created by or under a statute. It cannot come to life in any other way. And the statute which gives it life limits its powers to act. This is called its charter. That is the one thing to keep constantly in mind. It has no power to act unless that power is given to it in express terms by its charter or by the statute, or else implied from a power expressly granted. When it assumes to act outside of its powers, such acts are void. They are called acts "ultra vires"—outside of its power to perform. One of the things it can do is to govern itself. This it does by making by-laws. An amplification of this brief statement might cover a very large field. The underlying principles of interest to the layman relate chiefly, however, to the corporation's limited powers and the shareholder's limited personal liability.

11. *Does the fact that you are a stockholder make you the owner or holder of any part of the capital stock of the corporation?*

No. The capital stock is the money paid in or to be paid in by the incorporators to do business with. It is the corporation's capital, belongs to it and to no one else.

There is only one real stockholder or stock owner, and that is the corporation itself. What you own is a share or interest in that capital stock. In that sense, and in that sense only, are you a stockholder in the corporation. It is in that sense that the terms common stock and preferred stock are used, referring to the nature of your interest.

12. *Are the shares of stock you own liable to an assessment by the corporation, placed by it on all shares to raise money to pay debts or to provide a treasury fund for other purposes?*

No, unless the statute or charter provides for it, or there has been a contract or agreement to that effect to which your shares are subject. One of the purposes of incorporation is to secure for the stockholder a limitation of his personal liability. But that limitation comes from the statute, and the legislature can make it what it wants it to be, and you have to take it on the terms it gives. If then the statute says you can be assessed, then of course you can be. That is one of the things for you to know about your stock before you buy it, whether or not it is assessable.

13. *Have you as a stockholder a right to information as to the business and affairs of the company?*

Yes, provided you ask it in good faith and not for a purpose adverse to the corporation's interest.

14. *If you are the owner of stock in a joint stock company, is your status in the law that of a partner in a partnership, or of a stockholder in a corporation?*

Something of both. A joint stock company is created by agreement between the holders of its stock, not by act of the legislature. In that respect it is like a partnership. Also each stockholder, like a partner, is personally liable for the company's debts. But under the statute, the capital of a joint stock company is represented by shares of stock

which are transferable. It has a continuous existence, acts as an entity, sues and is sued in its own name. In these respects it is more like a corporation. The practical difference for you between a joint stock company and a corporation is your personal liability for its debts and the fact that your rights within the company itself are determined by the agreement, or articles of association as it is called.

15. *If you have had financial dealings with another and you claim that as a result of those dealings, he owes you money, can you bring him into court and make him account to you for what he owes?*

Yes. The principal question is one of remedy, into what court to go. If you owe him as well as his owing you and the accounts are complicated, or if the relation between you is a fiduciary one in its nature, or if you seek to make him disclose information which he has and you have not, you go into a court of equity. Otherwise into a court of law. But the distinction is hardly one of interest to the layman. It is enough to know that the remedy exists.

16. *Is the good will of a business a property right in itself?*

Yes. It has real value and can be sold and transferred.

17. *How is its value estimated?*

Generally, by finding out what the net annual profits have been over a series of years and then by computation fixing the average for a single year in that period, and then capitalizing that profit at a percentage rate to be determined by the nature of the business, and what the fair percentage of profit would be in that business.

18. *If you have sold your business to another and with it the good will, can you start another business of the same kind in the neighborhood?*

You cannot, if you have covenanted not to and the

covenant is limited in time and in the territory covered by it to what is necessary to protect the good will you have sold. It is against the policy of the law for you to bind yourself for a longer time or over a more extended territory than is necessary for this purpose, and if that is the nature of your covenant, it is void. If you have made no covenant at all, the general rule is that you can start another business similar to the one you have sold. You may solicit your old trade if you do it publicly, by advertisement or circular. You cannot solicit your old customers privately, although if they come to you of their own accord or after reading your advertisements, you may deal with them.

19. *How do you prevent others from making use of the good will of your business in selling their goods?*

One way is to place a distinguishing mark or symbol on the goods you manufacture so that goods made by you can always be known. Such a mark is called a trade-mark. It is unlawful for any one else to use it. It not only protects you but the public who know your goods and in this way have the means of knowing when they are getting them.

20. *Does a trade-mark give you an exclusive right to make the goods for which the trade-mark is used?*

No. Any one else can make the same kind of goods, but he must not deceive the public into believing that you were the one who made them.

21. *Can you acquire the right to use a particular trade-mark by merely adopting it?*

No. You must have actually used it on goods you have placed on the market. As between you and a competitor using the same mark for the same class of goods, the one who actually used it first regardless of who thought of it first, is the one who is entitled to it.

22. *Can you appropriate as your trade-mark a general descriptive word which others use in telling the public what they have for sale?*

No. It must be distinctive. The word "cracker" is not available as a trade-mark. "Uneeda" is—or was to the manufacturer who first used it.

23. *Is it necessary for you to trade-mark your product in order to protect yourself from another manufacturer who represents his goods as having been made by you?*

No. Such misrepresentation is regarded as unlawful. The legal name for it is "unfair competition." It is really a fraud—both on you and on the public—and upon your petition the court will order the defrauding manufacturer to stop it, and if you can prove the extent of your injury you can recover damages for the harm he has done you.

24. *Are you bound to deliver goods you have agreed to sell to another, and is he bound to take them?*

Generally, yes, if a price has been fixed, or a way of fixing it determined; if there has been a mutual assent to the terms of the sale; if there has been no mistake, misrepresentation or fraud; if statutory requirements applicable to the contract are complied with; and if the contract is not for an illegal or immoral purpose.

25. *Can you afterwards change the terms of your contract of sale or abandon it altogether?*

You can if the other party to it consents. Generally, you can if he does not consent, but you will have to pay him damages for his loss for the privilege of doing so.

26. *What must you do to complete the sale?*

Deliver the goods.

27. *If the buyer is disappointed in what you send him, or pretends that he is, has he any remedy against you?*

If you have given him in express terms any promise or warranty with reference to them, he can hold you to the

promise. If you have not done so, he can still require that the goods you send him shall be merchantable, but beyond that he cannot go. As a general rule, the buyer has to take the risk himself of the quality or soundness of the goods, if he takes them without any express warranty from you.

28. *When you offer goods for sale at auction, on what terms are they sold?*

You can make the terms whatever you want them to be, and when the bidders have notice of them, everybody is bound by them, both you and they. If you do not make any particular terms, then the auctioneer may make such terms in his discretion as will promote the sale and safeguard your rights.

29. *Can you withdraw your property from the sale? Can the bidder withdraw his bid?*

Either of you can up to the moment when the hammer falls. That is what that hammer means. The "going, going, gone" are good English words and mean what they say. While the sale of the property is still "going," both you and the bidder can withdraw from any commitment if you speak up loud enough to be heard. That chance has "gone" as soon as the last word is out.

30. *When does title pass to the bidder?*

As soon as he has complied with all conditions of the sale. If there are none, then when the hammer falls.

31. *If you promise that you will pay your friend's debt if he is not able to do so at a particular time, are you bound by your promise?*

You are if he accepts your offer, if the creditor is notified and accepts, if there is a sufficient consideration for your promise and a sufficient compliance with statutory requirements.

32. *After you have made such a contract, can the creditor sue you before he tries to collect from his debtor?*

Generally, yes. Your only remedy then is to try to collect it yourself from the debtor. But while this is the general rule, a creditor must exhaust his remedies against his debtor before he can hold you if you made your contract on those terms, or if a statute requires it.

33. *Are you entitled to a notice from the creditor that your friend has not paid his bill before he can sue you?*

No.

34. *What is the extent of your liability?*

That depends entirely on the terms of your contract. You can be held liable only to the extent of your promise.

35. *How does a contract guaranteeing payment of your friend's debt differ from your subscribing to his obligation as his surety?*

So far as your liability is concerned, not at all. When you sign your friend's contract, your obligation is that of a surety. When you make a separate contract of your own, guaranteeing his payment, your obligation is that of a guarantor. But in both cases, the nature and conditions of your liability depend on the terms of the contract.

36. *If instead of insuring the payment of your friend's debt, giving the creditor a right to sue you on your promise, you promise your friend that if he has to pay it, you will make it good to him, what is the nature of your liability?*

That is a contract of indemnity, an undertaking to make good to another any loss he suffers. There is no liability until he suffers a loss, and then only to him. An indemnity contract can be made to cover any kind of a loss your friend suffers provided it does not involve the enforcement of an immoral or illegal contract.

CHAPTER XXVI

AGENTS AND SERVANTS

Appointing Your Agent (1); Choosing to be Bound by Another's Unauthorized Acts (2); A Corporation Ratifying the Unauthorized Acts of Its Agents (3); How Long Does the Authority of Your Agent Last (4); When the Law Terminates the Agency for You (5); When You Are Bound and Not Bound by Your Agent's Acts (6); Your Agent Passing on His Agency to Some One Else (7); His Duties to You (8); Your Duties to Him (9); Distinction between Agents and Servants (10); Contracts of Employment (11); Your Duties to Your Employee (12); His Duties to You (13); Discharging Your Employee (14); Your Protection against Loss Due to His Fraud or Dishonesty (15)

1. *Do you authorize a real estate agent to sell your property for you at a certain price merely by inquiring of him whether he thinks he can obtain that price for it?*

No. To be sure, it is not always necessary to appoint one your agent in express terms in order to give him authority to represent you. Such authority may be implied from your conduct, but to have that effect your conduct should clearly show your intention to make him your agent even though you do not express it in words. Asking a real estate agent his opinion on values, of itself, does not do that. On the other hand, if when you asked him about values, you gave him a description of your property and placed your deed in his hands, his authority to sell the land for you might then very well be implied.

2. *If a stranger assumes to act for you but without authority, are you bound by what he does?*

No, unless you should afterwards make the act your own by ratifying it or adopting it.

3. *Can a corporation be bound by one without authority assuming to act for it?*

No, unless it ratifies the act, and if the corporation does ratify, the further question arises whether the act was one which the corporation had power under its charter to do. If not within its powers, the corporation cannot be bound even though it ratifies.

4. *For how long a period can your agent act for you?*

If you gave him authority for a definite term, or for a particular purpose, then until the end of the term or until the purpose of his appointment has been accomplished. If nothing is said about definite term or purpose when you appoint him, he may act until either you or he choose to terminate the relation.

5. *Can the agency be terminated in other ways?*

Yes. This happens if you sell property yourself which you authorized another to sell for you; where you become bankrupt, insane or die; where your agent acts adversely to your interest. When you marry Amanda, your agent no longer has any authority over property in which she acquires an interest.

6. *When are you bound by your agent's acts and when are you not bound?*

You are always bound if the agent acts within his authority. If he goes outside his authority, then the first question to ask is whether he is a general agent, having authority to act for you in all matters but under special instructions in regard to particular matters which he has violated, or only a special agent having limited authority

to act only in a particular matter and acting outside of that authority. You are bound by the acts of your general agent unless the person with whom he dealt knew, or should have known, that he was violating your special instructions. You are not bound by acts of a special agent outside the scope of his authority. An outsider always deals with him at his peril.

7. *Can your agent pass on his authority to act for you to some one else?*

Generally, no. The rule is that he cannot in matters calling for the exercise of discretion, skill or judgment. Of course you may consent to his doing it. Then he can.

8. *What are your agent's duties towards you?*

He must be loyal to his employment, serve you and you only. He must obey your instructions to the letter. He must exercise care, skill and diligence. He must render you an account of all moneys received and expended in your behalf.

9. *What are your duties to him?*

Keep to the letter and spirit of your contract with him. Pay him his salary, commissions and fees. Reimburse him for proper expenses which he has advanced out of his own pocket.

10. *What is the difference between an agent and a servant?*

You appoint an agent to represent you; you employ a servant to work for you.

11. *Must contracts of employment be in any particular form?*

No, unless required to be so by statute. A writing is not required unless by statute. Even an oral agreement to hire, expressed in words, is not necessary. Your employment of another may be implied by what you do when he

starts to work for you. This has already been discussed in Chapter XX.

12. *What are your duties to your employee?*

You must furnish him the work and the appliances called for by the contract. You must conform to statutory regulations as to hours of labor, and provisions for his health and safety. You must pay him his wages, provide for medical and surgical care where you have contracted to do so or where the statute requires it, or in the absence of contract or statute wherever a sudden emergency demands it. You must exercise the care and diligence required by law in the furnishing him a safe place to work and proper tools to work with, and in providing safe methods of work, especially for young and inexperienced employees. Questions relating to your liability for failure to do so are discussed in Chapter XX.

13. *What are his duties to you?*

He must render you the service contracted for. He must bring to the service loyalty and honesty, skill and care in its performance. He must work for you exclusively if he contracts to do so. He must not give to another the trade secrets and secret processes of manufacture which are your property. He must assign to you all rights to inventions made by him during his employment if he agreed to do so, or if the nature of his employment is such that an agreement to that effect is implied. Otherwise his inventions are his own.

14. *Can you discharge your employee whenever you want him to go?*

Generally, yes. But if, in doing it, you break his employment contract without just cause, you will have to make good the loss to him. If his contract is terminable at will, then you are not liable. And if he has given you

just cause for discharging him, you are under no obligation to him. Grounds for discharge are disloyalty to your interest, refusal to serve where the contract calls for service, deceiving you when he secured his job, misconduct rendering him unfit for it, general incompetency to perform his contract obligations, and neglect of duty.

15. *Where you are protected by a fidelity insurance policy or bond, can you recover for every loss occasioned by your employee?*

No. Only for losses covered by the policy or bond, generally losses due to fraud or dishonesty. The loss must have occurred during the time the policy or bond was in force.

CHAPTER XXVII

INSURANCE

Forms of Life Insurance (1); Necessity of Insurable Interest in the Life Insured (2-5); Surrender Value of Your Policy (6); Cause of Death as Affecting Beneficiary's Right to Recover (7); Amount Recoverable (8); To Whom Paid (9); Beneficial Associations and Mutual Companies (10); Accident Insurance (11); Health Insurance (12); Automobile Insurance (13-14); Liability Insurance (15); Fire Insurance (16-26); Insurable Interest (16); "Binding Slip" Giving Immediate Protection (17); Insuring Property Used for Unlawful Purpose (18); Renewal Slip (19); Assigning Policy to Another (20); Company Canceling Policy (21); Your Right to Surrender It (22); What Is a Total Loss (23); Amount Recoverable (24-25); Adjusting Loss (26); Burglary Insurance (27); Industrial and Group Insurance (28)

1. *What are some of the common forms of life insurance?*

The simplest calls for the payment to a beneficiary named of a stated sum upon your death. Another adds to this a contract to pay such sum to you in a stated number of years if you live that long. Another insures you only for a stated number of years. Another, combining a mortgage loan with insurance features, advances you the entire amount of the insurance at the beginning, the company taking a bond or mortgage to secure payment of the premiums, which is discharged when the payments stop at your death. All of these forms of policy are based on and provide for the payment of premiums by you. Sometimes the contract contemplates payment of such premiums up to the time of your death. Other contracts provide for payments during a limited number of years only, and the

continuance of insurance thereafter without the payment of any more premiums.

2. *Can you take out insurance on the life of another than yourself, naming yourself or some one else as beneficiary?*

It depends on whether you have an insurable interest in the life of the person you are insuring. If you have such interest you can insure. You cannot otherwise. Insuring the life of a person whose continued existence means nothing to you whatever is a wagering contract, pure and simple, and is against public policy and void.

3. *Is it necessary that the beneficiary you name in the policy on your life should have an insurable interest in you?*

No.

4. *If you cannot insure the life of another in whose life you have no insurable interest, can you get him to insure his own life and to name you as beneficiary, you agreeing to pay the premiums?*

No. This is simply an evasion, trying to do indirectly what you cannot do directly.

5. *Have you an insurable interest in the life of one who owes you money?*

Yes. If he lives he may be able to pay you.

6. *May you at any time stop paying premiums and recover from the insurance company some part of the money you have paid them?*

Not unless in the contract the company agrees to pay it to you. During the years you have been making payments, you have had the benefit of the insurance so that your payments have gone for something which you have already received. But sometimes the company undertakes to make a computation and to give you back a balance after deduct-

ing the value of the insurance you have had. This is called the surrender value of the policy.

7. *Is your insurance payable on your death regardless of what caused your death?*

That depends on the terms of the policy. It sometimes provides that no payment shall be made if you die from certain specified causes, as, for example, from the use of intoxicating liquors or from suicide, or if you die when engaged in certain prohibited occupations.

8. *Upon your death, how much does the insurance company pay your beneficiary?*

The full amount of the policy. In this respect, a life insurance policy differs from other forms of insurance where the company pays merely for the loss suffered.

9. *To whom is the insurance paid after your death?*

To the person or persons named as the beneficiaries in the policy. If no one is named, to the executor or administrator of your estate, unless the policy was taken out by some one other than yourself, in which case such person is regarded as having taken it out for his own security and the insurance is payable to him.

10. *What are the insurance benefits enjoyed by you if you are a member of a beneficial association or a mutual insurance company?*

Payment of stated amounts in case of sickness, accident or death. For these benefits you pay dues and assessments, and your failure to pay operates as a forfeiture of your benefits. The association or company pays these benefits out of a fund raised by assessment on its members. The difference between a beneficial association and a mutual insurance company is that the latter is an insurance company, organized to carry on an insurance business primarily, while the beneficial association is organized for social purposes primarily, and the insurance is an incidental feature.

Both, however, carry on their insurance business without capital on the assessment plan.

11. *What are the risks insured against in your accident policy?*

That can be determined only by reading the policy. It may apply to death or injury through "external, violent and accidental means." It probably covers the ordinary risks you run in your business. Undoubtedly it contains a clause that it does not cover injuries received in certain occupations regarded as hazardous. If you buy a travel policy, you will find it covers only accidents received while traveling as a passenger. Frequently the policy lists certain risks which it does not cover, as, for example, self-inflicted injuries or injuries resulting from voluntary exposure to unnecessary danger. Recovery can be had only for the particular injuries insured against in your policy. Do not make your own inference from the display type in your policy as to what the risks covered are. Read carefully the whole policy even though the print is small and seemingly unimportant.

12. *What are the risks covered in your health insurance policy?*

It may cover sickness from particular causes only, or it may cover sickness or disability generally. Only illness commencing after the issuance of the policy is insured against. Sometimes only illness commencing after the lapse of a certain fixed period after the taking out of the policy. Your policy probably limits the payments during any period of sickness. In all cases your rights are fixed and limited by the policy.

13. *Does the "collision" clause in your automobile insurance policy cover only collisions with other vehicles?*

Generally, no. Of course a policy can so restrict it. But the clause generally used "being in collision with an ob-

ject" means what it says, a collision with any object whatever. The result is that about every kind of a road accident is regarded as a collision. Running into a rut or hole in a highway is a collision. Turning a sharp corner and tipping over is regarded as a collision, because, after all, the injury really comes from your striking the ground. It is hardly safe to generalize on rights which are so entirely dependent on the phrasing of a clause in a contract. It is enough to say, perhaps, that "collision with an object," if that is the wording of your policy, means something more than collision with another automobile, and that if you "hit something" when you were hurt you probably can recover.

14. *After collision, how much can you recover under your policy?*

The terms of the policy control, but generally the cost of repairs not to exceed the cash value of the car. This does not mean the purchase price of the car but its cash value just prior to the accident.

15. *Can you insure yourself against losses from your own liability to others?*

Yes. This is called liability insurance. The most common form is the policy taken out by employers to cover their liability for injuries to their employees. Another familiar policy is the one taken out by automobile owners to cover their liability to others they may injure in their driving. Railroads insure themselves against losses due to the negligence of their employees; physicians against losses due to malpractice. In all of these cases, the rules already referred to govern—the risks covered and excepted, and the conditions of liability are determined by the provisions in the policy.

16. *Can you take out fire insurance on property which you do not own?*

Yes. All that is necessary is that you shall have an in-

terest in the property so that you will suffer a loss if it is destroyed. A mortgagee has an interest until his debt is paid, as has any creditor with a lien on the property. But a creditor with no lien has no insurable interest.

17. *When you take out fire insurance with the local agent, do you have to wait until the policy comes from the main office before you are protected?*

No. The agent gives you what is called a "binding slip" or memorandum of the contract, and your insurance takes effect from that moment provided your application for the policy is afterwards accepted. If the contract calls for payment of the first premium before the insurance goes into effect, then you must pay the premium when you take the binding slip to give it that effect.

18. *Is a policy placed on property used for unlawful purposes void?*

Yes, if it was taken out to protect the unlawful business. No, if it was put on property in good faith, and afterwards the property was used by its occupant for unlawful purposes.

19. *What is the effect of a renewal slip?*

It extends the original policy.

20. *May you assign your fire insurance policy to another?*

Generally, under the provisions of the policy, you may by securing the insurance company's consent. Without it, you cannot.

21. *Can the insurance company cancel the policy?*

Not unless it reserves the right to do so, or you have been guilty of fraud or misrepresentations in securing it.

22. *May you surrender it?*

It is generally provided in the policy or by statute that you may. Without such provision, you cannot.

23. *Is it necessary to show that every last plank in the building was burned up before you can recover as for a total loss?*

No. If it is no longer usable as a building after the fire, there is a total loss.

24. *Can you recover the full amount of your policy in case of a total loss?*

Not necessarily. What you do recover is the cash value of the property at the time of the fire, not exceeding the amount of the policy.

25. *What do you recover in case of a partial loss?*

Generally, you may elect to have the building repaired at the insurer's expense, or take an amount equal to the damage done.

26. *Is an adjustment of the loss made by the company's adjuster binding on you?*

Not until you agree to it. If you do not agree to it, you can sue and recover what you are entitled to under the policy.

27. *May you recover under a burglary insurance policy by showing theft and the value of the goods stolen?*

You must show these two things, of course, but burglary insurance policies are sometimes very explicit in the description of the felonious act covered. In such case you must show that the burglary took place in exactly the way stated in the policy. If the policy insures only when force and violence are used in making entry, no recovery for goods stolen without making entry by force and violence can be had. Again the policy may make certain requirements as to the care of the premises by the insured, perhaps that a watchman be kept on them. You must prove that you have lived up to all such requirements of the insurance policy.

28. *If you work in a mill and are paid weekly wages, is there any form of insurance to meet your situation?*

Yes. An industrial policy provides for the payment of premiums in weekly installments, and only after failure to pay a prescribed number of installments can your policy be forfeited. Group insurance is another form of industrial insurance. Here the employer is responsible for the payment of the premiums and he deducts the amount from the wages of the employees insured.

CHAPTER XXVIII

CONTRACTS, SIMPLE AND OTHERWISE

Two Required to Make a Contract (1); You Must Know What You Are Doing When You Make It (2); Necessity of Mutual Assent to the Terms (3); Necessity of a Writing and a Consideration (4, 24); When You Have Made a Mistake (5); Or Are Guilty of Fraud (6); Or Duress (7); Or Undue Influence (8); When Your Contract Is Illegal (9); The Court's Interpretation of What You Meant (10); Changing Your Contract or Giving It Up Altogether (11); Performing Your Contract and Liability for Damages When You Don't (12); Excusing Yourself or Trying to When You Don't Perform (13); Giving a Bond and Your Liability under It (14); Sureties on Your Bond (15); How Much You Must Pay When You Have To (16); Giving an "Undertaking" and Your Liability under It (17); Signing It (18); Your Church Subscription and What It Means (19); Fictitious Names on the List (20); Sunday Subscriptions (21); When You Must Pay and When You Needn't (22); Getting Back the Money You Paid (23); The Statute of Frauds and Necessity for a Written Memorandum (24); Sufficiency of the Written Memorandum (25); Partial Performance of the Contract as a Substitute for the Written Memorandum (26); What Happens if You Alter an Instrument (27, 28); Filling in Blanks (29); When Will the Court Cancel an Instrument on Your Petition (30); Restoring the Other Party to His Former Position (31); When You Are in the Wrong, Too (32); Petitioning the Court to Change an Instrument (33); When the Instrument Is Gone and You Cannot Find It (34); Substituting One Contract for Another or One Party for Another (35); Petitioning the Court to Order the Other Party to Perform His Contract (36-38); Limiting the Time within Which You Must Sue (39-41)

1. *Can you contract with yourself as administrator of another's estate?*

No. One cannot contract with himself even though he acts in different capacities.

2. *If you are extremely sick and at times delirious, can you at such times make a binding contract?*

If at the time you sign it, you have sufficient mental capacity to know what you are doing and to realize what it means, and you do know what it is all about, you are bound by it. Otherwise not.

3. *Have you made a binding contract with another for the sale of your car if you say to him, "You can have it for five hundred," and he replies, "I'll take it for four-fifty"?*

No. There must be a mutual agreement or assent to all the terms, before there is any binding contract.

4. *Must your contract be in writing?*

Where the statute requires it, it must be. (There is more about this below in question 24.) If one of the terms of your agreement is that it shall not be binding until reduced to writing, it must be. If neither the statute nor the contract requires it, it need not be. But in every case it must be based on a legal consideration to be binding. There need not be a money consideration. But you must get something for your promise, or, in any event, the other party must part with something as a consequence of the agreement before it can become a binding contract.

5. *If you were mistaken as to some fact connected with the making of the contract, are you bound by it?*

Yes, unless it affects the whole consideration of the contract. If it goes that far, there has never been any mutual assent, which means that there never has been any contract at all between you. For the same reason, if both of

you were mistaken, not you alone, then there is no contract to bind either of you.

6. *If one of you has deceived the other in the making of the contract, is it binding?*

No, if the deception was on some material part of it, and if it was done intentionally with the expectation that the other would act on it, and he did so act.

7. *If you entered into a contract because some one had threatened to injure you if you did not, are you bound by it?*

No, if your fear of injury was so great that you were prevented from exercising your free will. If it did not go that far, if you signed under protest merely to save yourself the inconvenience of a fight, then you are bound.

8. *Are you bound by a contract made at the suggestion of another who has such power over your will that your signing of the contract is really his act, not yours?*

No. But while such contracts are often made by one under the influence of a relative or member of the family, it does not follow that all contracts obtained by persuasion or appeals to the affection are void. If you made the contract because you chose that course, the act is yours and you must stand by it.

9. *Are you bound by a contract, the performance of which would involve you in some violation of the law?*

No. All contracts made in violation of law or involving a violation of law in their execution, or which are contrary to public policy, as, for example, contracts in restraint of trade or for immoral purposes, are void.

10. *What does your contract bind you to do?*

That depends on what the contract says and on the interpretation put upon it by the court. Because, after all, it is the court which enforces your contract, and it must act upon its own understanding of what you meant by it.

In making up its own mind in the matter, there are certain rules it follows. The most important of all is that your intention, *as expressed in the contract*, controls. To find out what that is, the court goes into all the circumstances surrounding the making of the contract, asks what it is all about, and what the purpose of it was, and when it has informed itself, it then comes back to the contract, and gives effect *to the words used* in the light of what it has learned about the making of it. There is one limitation of the rule, quite as important as the rule itself, already implied in the italicized words. Your intention controls, but only so far as it is expressed in the contract. It does not matter at all what your secret, unexpressed intention is or was, except as it corroborates or explains the words you used.

11. *After you have made your contract, are you at liberty then to change it, or to give it up entirely?*

You can if the other consents, but not otherwise. Of course if the contract is void for some reason, you are not bound by it.

12. *What are the rules governing the performance of your contract, and the recovery of damages if the contract is broken?*

If the other fails to do what he agreed to do at the time he agreed to do it, you may recover the damages you have suffered provided you have performed your part of it or are ready and offer to do so, and provided you can prove the damage.

13. *If you fail to perform your contract, can you justify your nonperformance and escape liability?*

Yes, in some cases. You cannot be held if it became impossible for you to perform either because of some act of God, or by the law, or by the act of the other party. But no other contingency will justify your nonperformance unless you have provided for it in the contract itself.

14. *When you give bond, what is the nature of your liability?*

You promise to pay another a certain sum of money, called the penalty of the bond. The promise is in writing and under seal, except where the statute dispenses with the seal. The seal makes the proof of consideration unnecessary. The bond contains a clause which provides that upon the happening of a certain contingency named, generally the performance by you of certain conditions, it shall be void and of no effect. This is called the condition of the bond. What you have done, therefore, when you sign a bond, is to guarantee that you will do certain things named therein, and that if you do not do them you will pay the stipulated penalty.

15. *Is it necessary that you should have your bond signed by sureties who undertake to pay the penalty when it becomes due if you do not?*

Yes, if the statute requires it or if the court orders it. Otherwise it is not necessary.

16. *Do you have to pay the full penalty named in the bond in every case of a broken condition?*

You do if the bond was given to secure your compliance with law. If the bond was given to secure your performance of a contract obligation to some one else, then it depends on whether the amount named in the bond had been agreed upon as the amount of damages recoverable in case the contract was broken. If that is the case, you must pay the full amount. But if the penalty in the bond has no relation whatever to the actual loss sustained, then you do not have to pay the full amount of the penalty, but merely enough to compensate the other for his loss.

17. *What is an "undertaking," and the nature of your liability under it?*

It is a promise made in the course of legal proceedings, or whenever the law requires it. Wherever it is required

by statute, it is not necessary to show a consideration, as the liability in such case rests on the statute.

18. *Is it necessary that you yourself should sign the undertaking to be liable on it?*

No. Your attorney, representing you in court, or your authorized agent, can sign it for you. Your sureties must sign it if they are to be bound by it.

19. *When you sign a subscription paper, is there at once a completed contract, making you liable?*

No. It is merely an offer, and even after acceptance, it is necessary to show a consideration. But if after you sign the paper, anything is done by your church or club or committee in charge of the project to which you are subscribing, in reliance on your subscription and the other subscriptions given, that circumstance operates both as an acceptance of your offer and as a consideration for it, and thereafter you are bound.

20. *If, in order to get you to sign, other persons of some consequence in the community place their names upon the paper, not being themselves real subscribers and never intending to be, can you, when you discover the fraud, withdraw your name?*

Yes. On the other hand, those who fraudulently signed are liable on their subscriptions. The law does not permit them to set up their own fraud in order to escape liability.

21. *Is a Sunday subscription good?*

Yes, generally. The Sunday laws generally permit works of charity and necessity to go forward on that day.

22. *When must you pay your subscription?*

When you have agreed to pay it. If you have attached any condition to your subscription, you are not liable until it is performed. A substantial performance, however, is enough. If a change in plan or purpose of the project is

made, you are released from your liability unless you consent to the change. If the enterprise is abandoned before completion, you are released.

23. *Can you recover back your subscription?*

You can wherever and whenever it is expressly so provided in your subscription, or if there has been no performance of the condition on which it was given, or if your subscription was fraudulently secured.

24. *When must you, under the statute, have a written memorandum of your contract?*

Any contract you enter into for the purpose of getting Amanda to marry you; not your promise to marry Amanda, or hers to marry you, but a contract entered into in consideration of the marriage taking place, which is an entirely different thing. The latter must be in writing. — Any promise you make as administrator or executor of an estate to pay a bill against the estate out of your own pocket must be in writing, as must any promise at all that you make to pay another's debt. — Representations as to another's credit must be in writing if you are to be held responsible on them. These are not contracts but they are almost the same thing as a promise to pay another's debt, and for that reason are classed with them. — Agreements which necessarily take more than one year to perform or the performance of which goes over necessarily into a time more than a year distant must be in writing. This means that agreements which may run over a year but which again may not, need not be in writing. — Land contracts or contracts having anything to do with estates or interests in land must be in writing. But leases for a period less than a stated time, generally one year, are excepted, leaving leases for one year or over among the contracts requiring a writing. — Contracts for the sale of goods must be in writing if the amount involved is \$50 or more. The statute can fix this amount at any figure, but \$50 is the usual limit. —

The statute making all these provisions is called the Statute of Frauds, an old English statute going back to 1676. Either this statute or statutes like it are in force generally throughout the United States.

25. *Does the statute mean that in the cases referred to there must be a formal written contract?*

No. An informal written memorandum is enough. Have you not seen a person writing a memorandum on his cuff? That is all right, if preserved carefully. But it must contain all the terms of the contract, and it must be signed by the party to be charged. You must sign it if you are the party to be held liable on it. If you want to charge the other party with it, you must hand your cuff over to him and let him sign it. In either case, it need not be signed by the party who sues on it. Of course, the cuff is not necessary. Anything will do.

26. *What is the purpose of the Statute of Frauds and when can the memorandum be dispensed with?*

The primary purpose is to furnish trustworthy evidence of the contract. It was originally enacted to stop frauds and perjuries. The reason for enacting the statute also indicates the reason for limiting it in its operation. It does not apply to the contracts mentioned if they have been partly performed. The part performance is splendid evidence of the contract, being itself an admission of its existence by the party performing it. So when part performance can be shown, there is no necessity for a memorandum.

27. *If an instrument after it is executed comes into your possession, and you alter it in some material particular without the consent of the other party or parties to it, what effect does that alteration have on the instrument?*

It destroys its effect as an instrument unless the parties to it later give their consent. An alteration in some immaterial particular does not have this effect.

28. *If you make the alteration so as to make the instrument conform more nearly to the intention of all the parties to it, have you destroyed its effect?*

No. But it surely must conform to the intention of all parties, and not your intention only.

29. *Is the filling in of blanks an alteration of an instrument destroying its effect?*

No.

30. *Can you on any grounds go into court and have an instrument canceled against the protest of the other party?*

Yes, on some grounds. If you were mistaken as to some material fact and the other party was responsible for your making the mistake, you can have it canceled. But you cannot, if by changing the instrument in some particular, you can cure the mistake. Generally speaking, the instrument can be canceled on any ground affecting its validity, as, for example, fraud, duress, undue influence or mental incapacity of a party to make it.

31. *Does the court attach conditions to its decree canceling the instrument?*

Yes. It requires you to restore the other party to the position he was in before the instrument was made. The reason for this is expressed in the maxim, "He who seeks equity must do equity."

32. *If you are in the wrong as well as the other party, can you make his wrong the basis for seeking a decree of cancellation?*

No. Another maxim covers this case, "He who comes into equity must come with clean hands."

33. *If an instrument is not what you intended it to be, can you ask the court to change it?*

The court will order it changed if you can prove a mistake common to you and to the other party, or if you can prove

your own mistake and the other's responsibility for it. Otherwise it will not order it changed. Here again, "he who seeks equity must do equity," and any condition the court makes in granting relief you must perform before you can have it.

34. *If you lose an instrument, do you lose your rights under it?*

No. You notify those liable in any way under it and if they deal with any one else as the owner of it, they do so at their own risk.

35. *Can you give up your contract and put another in its place?*

You can if all parties to it consent. This is called "novation." There can be also a novation of parties to the old contract if everybody concerned consents. That is, a debtor can arrange with another to take his place, if the new debtor and the creditor both consent. The old debt is discharged when that is done and a new one takes its place. Or a creditor may shift his claim to somebody else if the debtor and the new creditor consent. In that case the old debt remains, but the old creditor gives up his claim.

36. *When one under contract to furnish you goods refuses to do so, can you compel him to deliver the goods, or is your only remedy a suit to recover damages?*

A suit for damages is your only remedy if a money verdict is an adequate remedy. If you can get other goods in the market just as good, a money verdict is an adequate remedy. If you have to pay more for them, the difference represents your loss and that you can recover. But suppose you are building a stone house with stone from a particular quarry, and after your house is halfway up the quarry refuses to make any more deliveries notwithstanding your contract with it for stone for the entire house, and suppose it is impossible to get stone like it anywhere else.

Are you compelled to accept a patched job? In a case like that where obviously a money verdict does not meet the situation, you can go to court, tell it the facts and the court will order the recalcitrant contractor to do what he agreed to do. The court's order is called a "decree of specific performance."

37. *Can you have a decree of specific performance against an owner of land who agreed to sell it to you and then refused?*

Yes, as a matter of course. In the case of land, no question is made as to the adequacy or inadequacy of a money verdict.

38. *Does the court ever refuse a decree of specific performance where it is shown to be the only adequate remedy?*

Yes. It will refuse a decree if the contract is so uncertain in its terms that a proper decree cannot be framed; if the carrying out of the decree requires the constant supervision of the court and the court is not equipped to give it; if the decree would be worthless, as where under the terms of the contract the other party is entitled to abandon it at any time; or if performance has become impossible, as where an opera singer under contract to sing loses her voice.

39. *Does the fact that you have a right which you can enforce in the courts mean that you have an unlimited time for enforcing it?*

No. A statute called the Statute of Limitations limits the time within which you must bring your action if you are to bring it at all. The time varies with the different kinds of actions, and there are many provisions scattered through the different statutes limiting the time within which actions under them can be brought, but they are all referred to as statutes of limitations. No generalization can be made as to the length of time allowed, it varies so in

the different states, and even in the same state from time to time. The only safe thing to do is to look up the statute in your state for your particular kind of action.

40. *How is the time computed after you have found out what it is?*

You start counting it from the time your right to bring an action begins. So long as that right continues, you keep on counting it against yourself. If there is an interruption of the right, so that for a period you cannot sue for some reason or other, you stop the count, until the right to sue comes back. Then you start counting again. What you really have is the full allotment of action-bringing time. During this time, the statute is said to be "running" against you. This right to stop the count during the period of interruption exists, however, only where the statute makes provision for it.

41. *After you have lost your right to bring an action by failure to bring it within the statutory limit, can you ever get it back again?*

You can in some classes of action by showing that the other party has acknowledged the obligation or made a new promise to pay, in which case you begin your count again from the date of the acknowledgment or new promise. Generally the statute requires the acknowledgment or new promise to be in writing to have this effect.

CHAPTER XXIX

NOTES AND BANKS

Difference between Promissory Notes, Bills of Exchange and Checks (1); Negotiable Instruments Act (2); What "Negotiable" Means (3); What You Must Do to Make Your Note Negotiable (4); You Must Deliver Your Note to Give It Effect (5); It Must Have a Consideration (6); Your Defenses When You Are Sued on Your Note and When You Can and Cannot Use Them (6); Nature of Accommodation Paper (7); Making Demand on You for Payment (8, 9); Bank's Right to Decline Your Deposits (10); General and Special Deposits (11); Applying Your Deposit to the Payment of Your Debt to the Bank (12); Attaching Your Deposit (13); Overdrawing Your Account with Intent to Defraud (14); Forged and Raised Checks (15); Remedy for Bank's Refusal to Honor Your Check (16); Certified Checks (17); Securing Loans at Your Bank (18)

1. *What are promissory notes, bills of exchange and checks, and how do they differ from one another?*

If you write out a promise that you will pay another a sum of money whenever he demands it or at a certain fixed time in the future and sign it, the written promise constitutes a promissory note. If instead of promising that you will pay, you call upon somebody else, named in your written order, to pay for you, presumably out of funds of yours he has in his possession, or as against your credit, it is a bill of exchange. If the person you order to pay for you is a bank, which has funds of yours on deposit against which you are drawing, the paper which is really a bill of exchange is called a check. Draft is another word referring to bills of exchange of whatever kind.

2. *Are the rules of law relating to bills and notes different in the different states?*

Almost all states have adopted the Negotiable Instruments Law, so that generally speaking the law is uniform throughout the country. A few states have not adopted it.

3. *What does the word "negotiable" mean?*

The best illustration of negotiability is a bank note which passes freely from hand to hand without anybody ever thinking to ask questions about it. No one has to find out where it came from or what its pedigree is. So with your promissory note, if it is made in such form that it passes freely from one person to another, so that any one who takes it in good faith, giving value for it, can sue you on it and recover the full amount, it is negotiable. But not every note is negotiable, and it is not at all necessary that it should be. There are such things as nonnegotiable notes, and they are good, valid instruments. But a person who takes such a note takes it subject to defenses the maker has against others who have owned it. That is the reason it does not pass freely as money from one to another. Before one gives value for it, he asks every question he can think of about it, and makes as sure as he can that there is nothing the matter with it.

4. *If, for any reason, you wish to make your note in form so that it will pass readily from hand to hand (if you make it more valuable to others, you can raise money on it easier), what must you do?*

You must make your promise absolute, free from any conditions whatever. You must not add to your promise to pay money another promise to do something else. You must make your note payable in money only. You must make it payable on demand or on a day fixed or capable of being fixed under the terms of the note. You do not have to make it payable at a particular place. You must promise to pay a certain definite sum. After the words "I

promise to pay John Jones," you must add the words "or order" or "or bearer," or other words meaning the same thing. Generally, you do not have to add the words "value received," nor do you have to tell what the consideration for giving the note was. You must sign it, of course. And you must name the person to whom it is payable, unless you make it payable to bearer, or leave a blank, so that the holder, whoever he may be, can fill in his own name. If the instrument is an order by you on somebody else to pay, that person's name must appear. But a failure to write into the note any of these things will not interfere with the negotiability, provided only there are blanks left which can be filled in by the holder, he having authority to do so in the absence of evidence showing that he has not. Memoranda written on a note or bill do not interfere with its negotiability unless they add uncertainty to it or make its payment conditional.

5. *After you have written out a note, observing all these rules, is it binding upon you?*

Not until you have delivered it. You can spend all day writing out notes for millions of dollars and signing them. It does not mean anything as long as you keep them in your own pocket.

6. *When the statute says that it is not necessary that you should write the consideration into the note, does it mean that there need not be any consideration for it?*

No. There must be a consideration for it as between you and the person you promise to pay. That is, if *he* sues you on it, he must show a consideration for it if he is to recover. But if it is a negotiable note and passes out of his hands to somebody else, that somebody else can recover against you regardless of the fact that there was no consideration, provided only he did not know it, and provided further that he paid something out of his own pocket for the note. Perhaps it is well to give this "somebody else"

his legal name. He is called a "bona fide purchaser for value." Against him you are pretty nearly helpless. All you can do is to show that he is not, as he says he is, a purchaser of the note for value, or that he is not a bona fide purchaser. If you can break him down at one of these points, then you can bring forward your defenses, lack of consideration or whatever it may be, and escape liability.

7. *Is there any exception to the rule requiring a consideration for a note?*

Yes. You want to secure a loan. You have not credit enough of your own to secure as much money as you need. Your bank, if you are applying for the loan there, tells you it will let you have it, if you can persuade your friend who has property and the necessary credit, to sign the note with you. Anybody who places his name on a note, it does not matter where on the note he puts it, is or may be held liable on it if it is not paid when it becomes due. So when the bank wants your friend's name on your note, it wants the added security that his undertaking to hold himself ready to pay it gives. Your friend does it, and is bound. But there has been no consideration for his doing it, merely love and affection, which are not a consideration of any value whatever in this connection. Still the law makes him liable. He is called an "accommodation party" and the note he signs is called "accommodation paper." It does not matter how or where on the note he signs it. He may make the note himself and let you indorse it, or you may make it and he indorse it. In either case, you are both liable to the bank loaning you the money; you will be called upon first to pay, and the "accommodation party" will be called upon only if you do not pay.

8. *Is it necessary for the holder of the note to present it to you who made it and demand payment before suing you on it?*

No, even though the note is one payable on demand.

9. *Is it necessary for him to do so before suing anybody else liable on the note because of his indorsement on it?*

Yes. Indorsers are only liable after the maker has refused to pay. There is an exception to this which you will understand after having read question and answer 7. If an accommodation partly signed as maker, but the money raised on the note really went to you who indorsed it, you are the one primarily liable even though an indorser, and can be sued at once without showing a demand for payment on him.

10. *May a bank decline to receive your deposits?*

Yes, and at any time it wishes to, it may close its account with you and decline to receive any more. And it does not have to give a reason.

11. *What is the difference between a general and special deposit?*

The ordinary deposit of money is called a general deposit. Title to the money passes from you to the bank. It is mingled with other money of the bank, and the bank is your debtor for the amount received. It must pay back an equal amount to you when you ask for it even though the particular bills you gave the bank were stolen from the bank that night. Special deposit means the placing of property, securities or jewelry or a particular package of bills with a bank merely for safe-keeping. It is kept intact all by itself. It is not mingled with the bank's property. Title does not pass to the bank but remains in you. If it is stolen, you are the loser, not the bank, unless the bank did not take proper care of it for you. The bank insures your general deposit. It does not insure your special deposit unless it enters into a contract with you insuring it. It does, however, undertake to look after it and to do that with the same care that it gives its own property. There may be some confusion in your mind over the use of the word "special." When you sign your name to a check and

place the word "special" after it, that refers to your special "account." It has nothing to do with a special deposit. When you place money in the bank to the credit of your special account, you are making a general deposit but on your special account.

12. *May a bank apply your deposit to the payment of your indebtedness to the bank?*

Yes.

13. *May your creditor attach your bank deposit?*

Yes. After that, the bank cannot pay it out to you until the court tells it that it may.

14. *Is it a criminal offense for you to draw a check on your bank when you know you have no funds there to meet it?*

It is in some states, if you do it with an intention to defraud.

15. *If some one has forged your name to a check or has raised the amount of a check you have signed, and the bank pays it, does the bank lose or may it charge you with the full amount of its payment?*

The bank loses unless it can show that in some way you are responsible for what has happened. If you misled the bank into paying the forged check or if you received the proceeds when your fraudulent friend cashed it, or if you wrote your check in so careless a fashion or in so incomplete a form that it was easy to raise it, then the bank can charge you with the payment.

16. *What is your remedy if your bank wrongfully refuses to honor your check?*

You can recover damages for any resulting injury to you. Or you can take the punishment into your own hands by withdrawing the amount of your deposit and opening an account in the bank across the street. You can do that, of course, at any time.

17. *When the bank certifies your check, what has it done and what does it then do?*

It has certified on the check itself that there are sufficient funds of yours at the bank to meet the check, and it sets aside that amount to pay the check when presented. It withdraws that amount from the funds available to you for future checking purposes.

18. *When a bank discounts your note, what is the nature of the transaction?*

It has loaned you money and has paid itself in advance the interest on the loan for the period named in your note. When that period is ended, you owe the bank the full amount of the note. If you do not pay then, you give a new note paying interest in advance as you did before. This is a part of the bank's regular business, the way it makes its own profit, and it deals with you on a business basis. If you own a large property and your credit is good, the bank loans you what you want as matter of course if it has the money to loan. If there is some question about your standing, it may require another who has the credit you have not to sign your note with you, or it may require you to give them security, either land or stocks, which they undertake to return to you when you pay back the loan.

CHAPTER XXX

LAPSES

When Amanda Loses Her Pocketbook (1); When She Lays It Down in the Bank (2); Paying the One Who Finds It His Expenses and Something for His Time (3); Making Good on Your Offer of a Reward (4); Rewards to Policemen (5); Pawning Your Watch (6); Some One Else Pawning It without Your Knowledge (7); What Is Usury and the Effect of It? (8); Pledging Your Railroad Stocks (9); Bailment Distinguished from Pledge and Pawn (10); Chattel Mortgage Distinguished from Them All (11)

1. *When Amanda loses her pocketbook and somebody finds it, who is entitled to it?*

The finder may keep it against everybody but Amanda. He must give it to her, but no one else can take it from him.

2. *But supposing Amanda did not lose her pocketbook, but merely laid it down and forgot to take it up, and another finds it at the bank where she laid it down and claims it, can he keep it as against the bank?*

No. Things laid down inadvertently in a shop, bank or railroad train are not lost goods within the meaning of the rule giving the finder a right to keep them. The owner of the place where they are laid down is entitled to their custody until called for.

3. *What are the finder's duties to and his rights against Amanda?*

In some states under the statute, he must advertise the goods he has found. When Amanda claims and identifies

her purse, he must return it. Whatever expense he has been put to, she must pay, and if the incident has taken some of his valuable time, she must pay him for that.

4. *When you offer a reward for Amanda's purse, are you bound to pay it to one who finds it?*

Yes, unless you withdraw your offer before the purse is found. You may make your offer on any terms you choose, however, and those conditions must be substantially performed before you are liable. The finder of the purse is understood to have accepted your offer of a reward on the terms laid down.

5. *Can a policeman claim the reward?*

Not for doing anything it was his duty as a policeman to do.

6. *When you want to borrow money for a short period, are there other ways to do it than by going to a bank and borrowing on your note?*

Yes, you can go to a pawnbroker and give him your watch or other personal belongings as security, and he will loan you something less than its market value on a forced sale at a rate of interest for the shorter period considerably more than you would pay a bank but not over a rate fixed by statute for that class of loans. These loans cost the lender more in proportion to the amount involved and there is a greater risk to him of loss. This is the reason why the law allows the pawnbroker to charge a greater rate of interest. The law, by allowing it, is not taking advantage of a class of people less able to take care of themselves. Rather the law seeks to protect them in every way. If you fail to pay back the loan when due, the pawnbroker may sell the watch after the period given you to redeem and pay himself out of the proceeds. He must follow explicitly the requirements of the statute in making the sale.

7. *If somebody other than yourself pawns goods belonging to you without your knowledge or consent, can the pawnbroker keep the goods until his loan has been paid back?*

No, unless you had given the goods to the person who pawned them with a general authority to sell them for you. If you authorized him to sell them to a particular person only, and he pawned them, you can get them back without paying the loan.

8. *What is usury, and what happens when the lender charges you interest on your loan at an usurious rate?*

If he charges you at a greater rate than the statute allows, he is guilty of usury. He may not charge you for interest more than the law allows, but he may charge you for other items of pretended service which brings his total compensation above the legal interest rate. He is guilty of usury just the same. The law looks to the substance of the transaction. In a few states under the statute, a lender guilty of usury loses his money entirely, both principal and interest. In the majority of states he is entitled to a return of the money loaned and to legal interest, but to no more. Under statutes in some states, he is guilty criminally, the offense being, not the making of the usurious contract, but the actual taking of usurious interest.

9. *When you place your stocks and bonds in the possession of another who has loaned you money as security for his loan, what is the nature of the transaction?*

It is called a pledge. It is similar to a pawn. You pawn your watch (a personal chattel); you pledge your stocks (known as "choses-in-action"). Your rights and interests are the same in both cases.

10. *How does a bailment differ from a pawn and pledge?*

Pawn and pledge refer, as explained in the preceding questions and answers, to placing personal property in an-

other's hands for a very restricted purpose—only as a security for a loan—and they are again restricted to particular kinds of personal property, pawn to personal articles, pledge to stocks and bonds principally. Bailment covers all kinds of personal property placed in another's custody for any purpose whatever. When the purpose of the bailment has been accomplished, you (the bailor) take back your goods into your possession, or he (the bailee) returns them to you. The use to be made of the goods while in the other's possession, the care he is to take of them, his liability in case of loss, are all determined by the contract between you.

II. *What is the distinguishing mark between a chattel mortgage and the other transactions mentioned?*

When you mortgage personal property, the title to the property passes to the person loaning the money to you. There is a written transfer of title. To be sure, you can take it back again on the performance of certain conditions, but until you perform those conditions, the lender owns the property. In all the other transactions, pawn, pledge and bailment, you still own the property although it is out of your hands. In chattel mortgages, you retain the possession—generally you do, although it is not always so—but you no longer have the title. In a very general way, and perhaps nothing else quite matters in the present discussion, the one thing you must do to secure again your old rights in the property is the same in all cases—you must pay back the money you owe to the person having this claim upon you. When you do that, you are again in control of the property, subject to no obligations, liens or claims with respect to that transaction.

CHAPTER XXXI

WILLS, HEIRS AND ESTATES

What the Word "Estate" Means (1); Fee Simple in Land—The Greatest Estate in the World (2); Carving Up the Big Estate into Its Parts—Life Estate and Remainder, or Reversion (3); Estates in Personalty the Same, But Some of the Names Are Different (4); Amanda's Dower (5-7); Your Curtesy and Its Elusive Character (8); Literally, in Some States, an Estate by Courtesy of Amanda (9); To Whom Does Your Property Go When You Die If You Don't Make a Will? (10); Power to Give Your Property by Will to Any One You Wish, Provided You Know What You Are Doing, and Are Doing What You Want to Do (11); Necessity of a Writing (12); Reading It Over When Signing (13); All the Things You Must Do When You Execute Your Will (14); Revoking It (15); What Became of Your Will Made in Bachelorhood after Amanda and Timothy Came into Your Life (16); Putting New Life into Your Old Discarded Will (17); After You Die—Proving Your Will in Court (18); Finding Out What You Meant by It (19); The Court's Appointing a Manager for Your Estate and the Things He Has to do (20); Who is Appointed, Generally (21); Selling Your Real Estate to Pay Your Debts, But Only When It Has to Be Done (22)

I. *What is an "estate"?*

An interest in property, both real and personal property. Your estate in a particular piece of land is your interest in it, the nature and extent of your control over it. Land is one thing. Your estate in it is another. Land goes on forever and ever. Your estate in it does not, necessarily.

It may end in a month's time or a year. It may last a lifetime. It may, like the land itself, go on forever and ever.

2. *What is the greatest estate you can have?*

It is called a fee or a fee simple. If you own land in fee simple, that means you have absolute control over it, and can give it away or sell it or devise it in your will and as you will, provided you do not violate any rule of law or public policy in doing it. If you prefer to keep it and do not dispose of it in your will, it goes to your heirs, and if they feel about it the same way, it goes to their heirs, and so on forever. In a very few words, it is an absolute estate in perpetuity.

3. *Can you divide up your fee simple into parts and dispose of these parts in different ways?*

Yes. You can give Amanda an interest in the land for her lifetime. An interest for one's life is called a life estate. If you do that, that still leaves the remaining part of your fee simple to be disposed of. This remaining part is itself an estate, and it is called either a "remainder," or a "reversion." If at the time you give Amanda a life estate, you give what is left to somebody else, it is called a remainder. If you do nothing at all about it, simply give Amanda a life estate and stop there, your remaining interest is called a reversion, that is, a right to have the land come back to you after Amanda dies. These are the important estates, fee simple, life estate, remainder or reversion.

4. *What are the estates in personal property?*

The same kind of estates, although some go by different names. There is the absolute interest or ownership corresponding to the fee simple, the life estate in personalty as in realty, and executory and reversionary interests in personalty corresponding to remainders and reversions in realty.

5. *What is "dower"?*

The moment Amanda becomes your wife, the law endows her out of your real estate, gives her a certain kind of right in it. It does not become an estate until you die. But during your lifetime it is a very real interest, nevertheless, having some of the characteristics of an estate. The law protects it. You cannot deprive her of it without her consent. The name given to it very well describes what it is. Until you die, her right is called an "inchoate right of dower." When you are gone, Amanda's inchoate right changes into an estate. It takes on a new name, appropriate to the changed condition. It is now called "dower consummate."

6. *What is the extent of Amanda's dower?*

Generally it is a life estate in one-third of your realty. It attaches to every bit of realty which you have owned at one time or another during the whole period of your married lives. And it never becomes detached until Amanda herself says so, which she usually, however, does by signing the deed when you sell a piece of the land.

7. *If, independently of dower, the law gives Amanda a share of your estate after your death without your making a will, does she take this share and the dower, too?*

She would in some states; in others, the "distributive share," as it is called, is given in the place of dower.

8. *What is "curtesy"?*

It is your life estate in Amanda's realty corresponding to her dower right in your realty. Like dower, there is a distinction between curtesy before Amanda's death and curtesy after. Before her death it is called "curtesy initiate"; after death, "curtesy consummate." But there are differences. Curtesy initiate, unlike the inchoate right of dower, is an estate and not merely an inchoate right. It does not come

into existence with marriage, as dower, but you will have to wait for it until you and Amanda have "legitimate issue born alive capable of inheriting." When that happens, you can boast your supremacy over her in this, that while she has only an inchoate right in one-third of your lands, you have a fully developed estate in all of hers. She can still say, of course, that if she had not presented you with Timothy, you would never have had any interest at all in her lands while she would still have a third interest in yours. But even though Timothy has come to your rescue, Amanda still has the last compelling word. In most states, she informs you there is no such thing now as "curtesy initiate." The Married Women's Acts have looked after that pretty thoroughly. Nor have the men retaliated. The inchoate dower right still remains.

9. *Have the Married Women's Acts done away with the "curtesy consummate" as well?*

No. If you survive Amanda, you have a life estate in her realty, seeing there is Timothy. In some states, however, by statute Amanda could deprive you even of this by conveying or willing the property to some one else. In these states, your estate would seem literally to have no existence at all except by the courtesy of Amanda.

10. *If you or Amanda should die without making a will, to whom would your property go?*

In most states, if you survive Amanda, you have an interest in her property, both real and personal. This interest is known as your "distributive share." The statutes giving it vary greatly and you must look at your state statute to find out what that interest is. Then you have your estate by the curtesy—the "curtesy consummate" of the preceding paragraph—that is, if Amanda has chosen to leave anything to which it can attach. If you die first, then Amanda takes whatever the statute allows her, and that too varies in the different states, and is in addition to

or in place of dower as the statute in the particular state provides. After you or Amanda have taken your share of the property, what is left goes to Timothy and his brothers and sisters in equal shares. If Timothy has no brothers or sisters, then he takes the whole of it. If Timothy is born after you die, the rule is the same. But in some families there are no children. In that case what is left goes to the parents or to the survivor of them. When there are no children and no parents, then to the deceased's brothers and sisters. If one or more of these have died leaving children, the children take their parents' share. The statutes carry the descent along further—grandparents, uncles and aunts, great-grandparents, etc.—but the statutes vary and the chances of their application in the average family are exceedingly remote. Of course, debts must be paid first. In the statement of these rules, it is assumed that they have been paid.

- II. *Can you by making a will do away with all these rules of descent in your case and determine how and to whom your property shall go?*

Generally, yes. Nor are there any restrictions whatever on your power to give your property to any one you wish. You may be as eccentric or whimsical or unnatural or revengeful as you please, provided only you have an understanding of what you are doing, and are doing what you yourself want to do. When the unmentioned relatives try to upset your will, they generally try to prove either that you did not know what you were doing and could not know, or that you were so weak-minded that you were driven into the making of it by some one who dominated you to such an extent that your will was not your act but the act of him who told you to sign it. Of course your eccentricity may help them to prove that you did not have the mental capacity to make a will, or that you were so weak-minded that you were easily the tool of another, but unless they

establish either one of these facts, your queer ways or unnatural thoughts do not matter.

12. *Must your will be in writing?*

Generally, yes. If written on several sheets of paper, there must be some way of identifying each sheet as part of the will, either by fastening them together, or by references in the body of the will in or on each sheet.

13. *Must you read over your will at the time you sign it?*

No. You must know what your will contains but that can be shown in other ways than by reading it when you sign it.

14. *What are the formal details you must follow in executing your will?*

The statutes vary somewhat, and it is vitally necessary to follow explicitly the requirements of the statute in your state. So you should consult that—better still consult your lawyer. With this caution, it is safe, perhaps, to generalize. You must sign the will or have some one do it for you under your direction. It is better to sign at the end of the will. In some states, you must. Have your will witnessed by the proper number of competent witnesses. They must either know you or know who you are. One who takes an interest under the will cannot witness it. When all of you are together ready for the execution of the will, request the witnesses to act as witnesses to your will. Tell them before you sign, although you can tell them at any time while they are there, that this document which you have requested them to witness is your last will. Sign the will in the presence of all the witnesses. If you have already signed it, tell them that the signature on it is your signature. Then ask the witnesses to sign, and have each of them sign it in your presence and in the presence of each other. Although the signing in the presence of each other is not an essential, it is better practice to have them do so. Sometimes there is a recital

in the will that all these things have been done. While this is not necessary, it may help later in proving the proper execution of the will. If the recital omits some of the details, it will help as far as it goes. Such omission does not affect the validity of the will.

15. *If after making your will, you make another, does the second will operate to cancel the first?*

Not necessarily. It does if in the second will there is a clause expressly revoking the first, and even in the absence of such a clause, if there is a provision in the second will inconsistent with a provision in the first, that particular provision in the first will is regarded as having been revoked, the rest of the will continuing in force. Effect will be given to both wills if there are no revoking clauses or inconsistent provisions.

16. *Does your marriage to Amanda and the birth of Timothy operate to revoke a will you made when you were a bachelor?*

Generally, yes. This will not happen though if Amanda and Timothy are provided for in the will, or by a deed executed by you before you made the will.

17. *After you have revoked your will, can you bring it to life again so that it will have effect at your death?*

Yes, but you cannot do it by simply saying so or writing a letter to that effect. You must write out your intentions, sign the statement and have it witnessed with all the formalities required for the original execution of the will.

18. *Does your will become effective at once upon your death?*

No. It must be proven in a court proceeding that it was your will, and the court must enter a judgment to that effect before it becomes effectual to pass title to the persons you wished to have your property. This is called "probating the will." All that the court does at this time is to determine

that when you made your will, you had enough mental capacity to make it, that you executed it with all the formality required by statute, and that there was no fraud or undue influence practiced on you when you made it. That is all the court does in the probating of the will. It does not determine what effect certain provisions in your will should have or whether or not they are to have any effect at all. That comes later after the will itself is established.

19. *If there is any doubt as to what certain provisions in your will mean or how they should be applied in a particular situation, what is done?*

The person responsible for carrying out the provisions in your will—generally he is called the executor—asks the court to tell him what to do. He files in the court a “petition for instructions.” The court after listening to what everybody else, having an interest in the matter, thinks you meant, makes up its own mind and tells the executor and the world in a written opinion what it thinks you meant, and instructs the executor to proceed that way. This is called “construing a will.” The court in doing it follows certain fixed “rules of construction,” the most important one of all being that everybody must try to find out what you meant, if that is possible, and if at last your meaning is discovered, effect must be given your intention unless it violates some rule of law or public policy. But it must be your intention *as expressed in the will*, either in expressed terms or by implication from something said in it. The rules are similar to those followed in the court’s interpretation of a contract. The field of inquiry is a great deal bigger than in contracts, because in going into the circumstances which may throw light on your expressed intention in your will, the court may have to go into the whole of your past life, or a very large part of it, and into the most intimate parts of it.

20. *What becomes of your personal estate after your death?*

Your debts must be paid. Your claims against others must be enforced and some one must see that they are. Your estate must be inventoried, and after the debts have been paid, whatever remains must be distributed by some one authorized to do it to those entitled to the money. Who does it? The court appoints some one for the purpose, gives him the authority, supervises what he does, passes upon his accounts, gives him an honorable discharge when he is through, sees that he is paid for his services, and orders the payment of the balance to those entitled. The person appointed by the court to do this work for your estate is called an "administrator" if you die without a will (intestate as it is called), or an "executor" if you left a will (testate). After death, you are referred to as the intestate in the first case, or as the testator in the second.

21. *Whom does the court appoint?*

If you die testate, having named some one in your will to serve as your executor, the court generally appoints the person you name. If you die intestate, the matter of appointment of your administrator is regulated by statute entirely. Amanda is entitled to the appointment if she wants it. If she dies first, you are entitled to administer her estate unless you are not a fit person to do it. If Amanda—now she is alive and you are dead—decides she does not care to administer your estate, any of your next of kin may be appointed. If they don't care for the job, a creditor may receive the appointment. To whomever is appointed, the court issues "letters of administration." These are his credentials. After the appointment, the administrator, and usually the executor, gives bond, and he is then ready to go ahead with the administration of your estate.

22. *Does the administrator or executor have any control over the real estate?*

Primarily, no. Title to your real estate goes immediately after your death to your heirs, or if you left a will, to the persons to whom you gave it. But if your personal estate is not sufficient to pay your debts, the administrator or the executor petitions the court to order the sale of enough of your real estate to provide funds for doing it.

CHAPTER XXXII

TRUSTS AND GUARDIANSHIP

Placing Property in Trust for Amanda and Timothy (1); Who Can Act as Trustee (2); Supervision and Control by the Court (3); Grounds for Removal of Trustee (4); Powers of Trustee (5); His Duty to Account (6); Enforcement of Trust (7); Appointment of Guardian (8); Accepting Appointment and Giving Bond (9); Ward Marrying (10); Guardian Becoming Insolvent (11); His Removal (12), Custody of Ward (13); Religious Instruction (14); Education (15); Making the Ward Earn His Own Living (16); Management of Ward's Property (17, 18); Discharging Guardian from Further Responsibility (19, 20)

1. *You are in active business and it may be a highly speculative business where the risks are considerable. You wish to provide a sure income for Amanda and Timothy, secure from the dangers and risks to which your property is constantly exposed. How do you do it?*

You set apart sufficient property to yield, when wisely invested, the income you wish Amanda and Timothy to have. You transfer that property to another to hold and manage as trustee and to pay the income from it to Amanda and Timothy. The property set apart in this way is a trust fund. You are the creator or settlor. The manager of it is the trustee. Amanda and Timothy are the beneficiaries, sometimes called the "cestuis que trust," "cestui que trust" if one only is referred to. If at the time you make the trust you have only enough property to pay your bills, it belongs to your creditors really, and setting it apart for any other use defrauds them. But if the making of the

trust involves no fraud, then thereafter it is not your property and your creditors cannot reach it. It has become a practically safe, sure, permanent source of income to Amanda and Timothy.

2. *Who may be a trustee?*

Any one capable of holding property. Corporations can so act. The large trust companies have extraordinary facilities for rendering this service.

3. *Who controls the trustee, supervises his administration, removes him if necessary?*

The court.

4. *What are some of the grounds for removal?*

Unfitness or incapacity for the job. A mistake of judgment is not a ground unless repeated so frequently as to show unfitness. Bankruptcy is not in itself ground for removal. It depends on the circumstances. An interest in the subject matter of the trust hostile to the beneficiaries. Neglect of duty. Failure to obey the court's orders. Dishonesty in the trust dealings.

5. *What are the trustee's powers in the management of the estate?*

They are limited by the terms of the instrument creating the trust. The instrument contains the powers deemed necessary by the settlor for the proper management of the estate. Where the power is doubtful or wherever the instrument requires it, the trustee must apply to the court for instructions as to what to do or how to act.

6. *What is the trustee's duty in the matter of accounting?*

He must keep separate and accurate accounts and be prepared to render an account to the court at any time upon the demand of any one who has a legal right to know, and that means any one having a pecuniary interest in the estate. No one else has a right to demand an accounting.

7. *How is the trust enforced?*

By court orders directed to the trustee.

8. *Can a mother be appointed guardian of her children after her husband's death, if her interest in the estate is antagonistic to the interests of her children?*

No. The paramount consideration in the appointment of a guardian is the welfare and interests of the child.

9. *After appointment, what must a guardian do before taking charge?*

Generally he must notify the court of his acceptance, take the oath of office and give a bond for the faithful performance of his duties.

10. *Does the ward's marriage terminate the guardianship?*

If the ward is a female, it does as a general rule. In the case of a male ward, guardianship is terminated as to his person, but not as to his estate.

11. *If the guardian becomes insolvent, will he be removed?*

Generally, yes. A guardian will be removed whenever the best interest of the ward demands it.

12. *Is improper or immoral conduct on the part of a guardian ground for removal?*

Yes.

13. *Has a guardian power to deny persons access to his ward?*

Yes, subject to such limitations as the court may fix.

14. *Has the guardian control of the religious instruction of his ward?*

Generally the court orders that the ward be brought up in the religious faith of his parents.

15. *Has the guardian power to direct the ward's education?*

Yes. The rule to be followed by the guardian is that he shall be brought up in a manner suitable for the situation

in life which he may be expected to occupy, provided the ward's estate is sufficient for the purpose. Expenses connected with the ward's education are to be met out of the ward's estate and not out of the guardian's.

16. *Is it the guardian's duty to make the ward earn his own living?*

Generally, yes, so far as it does not conflict with the ward's acquirement of an education.

17. *What are the guardian's rights and duties with respect to his ward's property?*

The guardian is the trustee of his ward's property. He must get it into his possession and control, manage it for the ward and render an accounting to the court, showing his receipts and the nature and amount of his expenditures.

18. *Must a guardian secure an order of court before selling any of his ward's real estate?*

Yes, unless he has been granted authority to do so under a statute or a will providing for the guardianship.

19. *May a guardian be discharged from any further liability by the court without filing a final account?*

No, unless the ward after he comes of age joins the guardian in asking for such discharge.

20. *Can a guardian secure his discharge by making a settlement of his account with his ward during his minority and getting a release from him?*

No, unless the settlement is made on the ward's false representation that he is of age, and it is shown that no advantage of the ward was taken.

CHAPTER XXXIII

THE CEMETERY LOT

Nature of Your Title to Your Cemetery Lot (1); Selling or Mortgaging Your Lot (2); Your Duty to Care for the Lot, and the Cemetery's Right to Remove Bodies if You Don't (3); Right to Have Your Own Gardener Care for It (4); Burial of the Old Colored Nurse in Your Lot—the Nurse Who Cared for You When You Were a Baby (5); Burying Your Pet Dog in the Family Lot (6)

1. *What is the nature of your title to your cemetery lot?*

Generally, merely a license to use the ground for burial purposes to the exclusion of others as long as there is a cemetery there. If the city orders the cemetery to give up that particular part of the land where your lot is, as it may do if the public health or welfare requires it, or if it orders it to discontinue its use of the entire cemetery for burial purposes, your license ceases. This is so even though the deed in form is the same as any other deed of land and purports to grant you the fee. The reason is that the subject matter of the grant is a license, and the form of the deed to you cannot change that.

2. *Can you sell or mortgage your cemetery lot?*

Not after interments have been made in it. Nor can you in any event without the consent of the cemetery managers where the constitution of the cemetery association so provides.

3. *If you fail to care for your lot, may the cemetery remove the bodies buried there?*

It may if the cemetery rules to which you subscribed when you purchased your lot give it authority to do so.

4. *Have you a right to have your lot cared for by your own gardener if the rules of the cemetery are that the care of all lots shall be under the direction of the superintendent?*

No.

5. *Have you a right to bury your old colored nurse in the family lot?*

It depends on the regulations of the cemetery. They are controlling. If they restrict burial rights to members of the white race or to members of any particular sect, you must conform.

6. *Can you bury your pet dog or cat in your cemetery lot?*

No.

CHAPTER XXXIV

PROPERTY AND INCOME

Property Defined (1); What Are the Rights of Ownership (2); Distinction between Tenancy-in-Common and Joint Tenancy (3); Your Right as Cotenant to Possession and Enjoyment of the Whole (4); Who of the Cotenants Pays for Repairs and Improvements (5); Must You Pay Rent if You Occupy the Whole (6); Dividing the Property and Adjusting the Accounts between You and Your Cotenants (7-9); Your Right to Compensation for Improvements Which You Have Placed on Land Belonging to Some One Else But Which You Thought Belonged to You (10-12); Taking Your Property Away from You for Some Public Use (13, 14); Income Items: Interest on Money Owning You (15); Interest on Bonds (16,17); Dividends (18-19); Is an Annuity Payable Annually (20); Is It Merely for the Period of Your Life (21); Annuity to Timothy for His Maintenance and Education (22); Your Right to the Capital Sum on Which the Annuity to You Is Based (23); Ground Rents (24)

1. *What is property?*

Everything which is the subject of ownership. Your property is whatever you own to the exclusion of others. Property is ordinarily classified as real and personal. Sometimes an article is one or the other, depending on the use you make of it. As long as you leave it in the ground, it is real property. When you separate it from the ground to use elsewhere or to sell it, it becomes personal property. When you put it into the ground again, it becomes again real property. Such articles are trees, rocks, crops and manure.

2. *What are your rights as owner?*

Your rights to possession, use and enjoyment, your right to sell or otherwise dispose of the property.

3. *What is the distinction between a tenancy-in-common and a joint tenancy?*

If you are a tenant-in-common of a piece of land, you own only a part of it, a third perhaps, but that third is all your own. You do not share it with anybody. The trouble is that it has not yet been separated from the other two-thirds, so that necessarily you and the owners of the other two-thirds are all of you in possession of all of it. The possession is held in common, but the title is not. The result is that when you die, your share goes to your heirs just as your other lands to which you have title go. On the other hand, if you are a joint tenant, you and the other tenants hold together the title to the whole tract of land. You own not one-third but three-thirds, only there are others who own it together with you. The result in this case when one of you dies is that he simply drops out. There is one less owner. The surviving tenants own now what they owned before—that is, the whole land—but there is one less tenant to share it with. The practical difference then to you comes when one of you dies. If it is a tenancy-in-common, his share goes to his heirs. If it is a joint tenancy, it goes to the surviving tenants.

4. *If you are a tenant-in-common of a third of the land, can you keep the other tenants out of your third?*

No. You have a right to be let into possession of the other two-thirds. You cannot keep them out of yours. You all have a right to possession of the whole. It is the same if you are a joint tenant, only it is easier to see why it is so in the case of joint tenancy, where you own not a third, but the whole. Of course you are entitled to possession of the whole if you own the whole.

5. *Who of the cotenants pays for repairs and improvements?*

The one who makes them. Nor can he demand that the others contribute towards them unless there is an agreement to share the cost or unless the repairs were absolutely necessary to preserve the property. The rule is the same whether the tenancy is in common or joint.

6. *If you are occupying the whole property alone, can the other tenants charge you rent for their shares?*

It depends on whether you occupy with intention to exclude them from their shares. If you do, then you must pay them for your use of them. If there is no intent on your part to exclude them if they wish to share the possession with you, then you are not liable simply because they do not wish to do so. This is the rule of the common law. Statutes, however, quite generally make a tenant-in-common or a joint tenant in occupation of the whole pay rent to the other cotenants for the use of their shares.

7. *Can you have the property divided so that thereafter you will have exclusive ownership and possession of your share?*

Yes. You can do it in two ways, either by agreement or by petitioning the court to divide the property for you. When you do it by agreement, you can proceed in any way upon which you and your cotenants can agree. You can agree among yourselves what part of the land shall go to each, or you may agree upon some one to divide it for you, in which case you are bound by his decision, or you may divide the land into parts and draw lots for the parts. It does not matter what device you employ so long as you agree upon it. If agreement is impossible, then either one of you may compel the others to submit to a division by the court by instituting in the court what is called a "suit for partition."

8. *If the property cannot be divided, how is the partition made?*

By sale and distribution of the proceeds to the cotenants in proportion to their shares.

9. *Does the court undertake to balance the accounts between the parties so that the action will be a final adjustment of the whole matter?*

Yes.

10. *Do improvements which you have placed on lands belonging to some one else thinking that they belonged to you go to you or to the owner of the lands?*

Where the statute provides that the improvements are yours, they are. Several states have such statutes. If after discovering your mistake you enter into an agreement with the owner whose title you still dispute that they shall be yours if later you are obliged to give up the premises, they are. If you put them there with the owner's permission under such circumstances, they probably are yours, whether they are or not depending on just what the understanding between you was. If there is no statute and no agreement and no license, then every improvement you put at your expense on another's land, belongs to him.

11. *If the statute allows you to keep the improvements, what must you show to be able to do it?*

That you were occupying the land claiming title to it adversely to the true owner, and that you placed them there in the honest belief that you were the true owner.

12. *Can you recover from the owner the full cost of the improvements?*

No. Only the amount of increased salable value they have added to the owner's land, minus the rent or profits for the time you have had the use of it.

13. *Can land owned by you in fee ever under any circumstances be taken from you against your will?*

Yes, it can be taken by the government for public purposes under what is called the power of eminent domain upon paying you what is found to be the fair market value of the land. What this is is determined in proceedings to take the land. This power of eminent domain can be delegated by the state to any one, even an individual, but the land can only be taken for a public use. The government can also take away your property against your will whenever necessary for the public health and safety. When they do this they act under the police power, and in this case they do not have to pay you for the property they take. The loss is yours.

14. *What are some public uses for which your land might be taken?*

Construction of highways or public buildings. Railroads, even though owned by a private corporation or individual. Spur tracks running into a private industrial plant are not public use, if the use made of them is exclusively private. But if opened to the public, or serving some public purpose, they are a public use notwithstanding the incidental private use made of them.

15. *In computing your income, can you include interest or indebtedness due you from others?*

It depends on the terms of the contracts you have with those owing you money. If the payment of interest is provided for, you are entitled to it, and at the rate and on the terms stipulated provided you keep within the law on the rate charged. Statutes fix a rate over which you cannot go, and in some states there are statutes regulating your right to compound interest under your contract. Generally, however, you are entitled to compound interest if you contract for it. Interest runs from the day and to the day you have agreed to in your contract, or where you pay out

money for another at his request from the day you do it to the day it is paid back.

16. *If a corporation fails to pay the principal of its bonds when they fall due, can you collect interest on the unpaid principal after its default?*

Yes, and at the same rate where it is so provided in the bond. If nothing is said about the rate after maturity, then you can collect at the legal rate.

17. *Are the interest coupons which you cut from the bonds when they are payable negotiable, can they be passed from hand to hand without question?*

Yes, if made payable to bearer. But the coupon itself must carry this clause if it is to be negotiable after it is clipped. Before it is clipped, the payable-to-bearer clause in the bond will carry it from hand to hand without question, but not afterwards. The other terms in the bond are held to refer to coupons both before and after severance. Of course, both bonds and coupons are protected by the same mortgage security.

18. *On what stocks do you take dividends?*

On the stocks you own at the time the dividend is declared, irrespective of the time the dividend was earned and irrespective of the time when it becomes payable.

19. *Can you compel the directors of a corporation to declare a dividend if they have made large profits or have a large surplus?*

Generally, no, unless you can show that they are acting fraudulently or so unreasonably as to amount to fraud. Short of this, directors are free to exercise their judgment on the wisdom of declaring a dividend under the circumstances. Possibly you may have some rights in the matter under a statute or under some form of contract with the corporation.

20. *Is an annuity payable annually?*

Not necessarily. It is payable at regular periods, but what those periods are depends on the terms under which the annuity was granted to you. An annuity is a fixed sum as distinguished from other forms of income as net profits which vary in amount. It is chargeable against the person or corporation which grants it to you, but not against any real estate unless the grant makes it so. A ground rent, on the other hand, is a stated amount payable regularly out of real estate.

21. *Is an annuity limited to the term of your life merely?*

That depends on the terms of the instrument granting it to you. If the terms limit the annuity to your lifetime, then that is the limit. But they may provide for a few years only, or for the lives of you and Amanda, or they may provide that payments shall go on forever.

22. *Does an annuity for the maintenance and education of Timothy terminate when he comes of age?*

No, unless the instrument granting it expressly says so.

23. *Have you a right to take the capital sum on which the annuity is based in place of the annuity?*

You have, if the grant contains instructions to invest a sum sufficient to produce the annuity, and if the annuity is granted absolutely without restriction or condition.

24. *If part of your income is in the form of ground rents, what security have you for the payment of the rents?*

You may reënter and take possession of the land if the rent is not paid where such condition is contained in the instrument reserving the ground rent. When an owner of land conveys it in fee, reserving to himself rent to be paid out of the land to him and to his heirs and assigns forever, he has created a ground rent. Leases for long terms containing a covenant for perpetual renewal amount to the same thing. It is a form of investment by which an annuity out of land and chargeable against the land is secured.

CHAPTER XXXV

BOLSTERING UP THE FINANCIAL STRUCTURE

Changing a Speculative into a Safe Investment (1); Two Persons Only for an Exchange—Three Are One Too Many (2); Taking Back Your Offer (3); When Your Title Is Bad (4); Necessity for Writing (5); Mistake, Fraud or Breach of Trust as Ground for Setting Aside the Exchange (6); Brokers and Their Authority to Bind You (7); Information as to the Credit of Persons with Whom You Deal (8, 9)

1. *If you have a property yielding large profits but of too uncertain a value and are seeking a safe investment paying a smaller return while another younger man has a property too safe to stir his blood, is there any short cut to your getting his property and he taking yours?*

Exchange them. No money is needed, if both of you are satisfied with the values and count it a fair exchange. The transaction is known in the law as an "exchange of property." Another perfectly good legal term is "swap."

2. *If action of a third party is necessary to the consummation of the trade, is it a contract of exchange?*

No. For an exchange of property "two is company," but "three is a crowd."

3. *Can you take back your offer to exchange?*

Yes, if you act before the other has unconditionally accepted it.

4. *If your title is bad, is the other bound?*

He may be. The fact that your title is bad when you make the contract does not matter. But you must see that

it is good when the time comes to make the exchange. A bad title then lets him out.

5. *Must the contract be in writing?*

The Statute of Frauds requires a written memorandum of the terms signed by the one of you who happens to be the defendant in a suit to enforce it. The other need not sign it.

6. *Can you have the exchange set aside after it is once made?*

You can in case of a mistake on a material point unless you have ratified it after discovering your mistake; or if you have been deceived on a material point by the other acting with intent to deceive; or if the other was your confidential agent and there has been a breach of trust.

7. *In changing your investments, how does a broker aid you?*

He negotiates contracts to sell, or buy, or exchange, and charges a commission for his services. If he is a stock-broker or a factor, also known as a commission merchant, he has possession of your property, and for that reason generally can deal with another as though he were the owner of it. But brokers in other transactions do not have possession of your property, and the contracts they negotiate must be made in your name to bind you.

8. *How can a mercantile agency aid you in your business?*

By giving you information as to the financial standing and credit of persons with whom you are engaged or about to engage in business. The information they give aids you in detecting the weak spots and in determining to what extent you can give credit in certain quarters.

9. *Does the agency guarantee the accuracy of its information?*

It can, and up to the limit named in its contract it will be liable to you for any loss you sustain resulting from

inaccurate information which it gives. You can only recover the amount of your loss, however. On the other hand, the agency may stipulate that it will not be liable for losses resulting from inaccurate information. Such stipulation will not protect it, however, if it gave you information which it knew to be false or where it was grossly negligent.

CHAPTER XXXVI

THE FARM AND TAXES

Trading in Farm Products (1); Labeling Farm Products (2); Making Sure that the Fertilizer You Buy Is What They Say It Is (3); Compelling Your Neighbor to Destroy the Weeds on His Farm (4); Destroying Infected Trees (5, 6); Farm Laborers and Threshers Enforcing Their Pay Out of Your Crops and Grain (7); Contract for the Sale of Your Crop (8); Paying Your Debts Out of the Crop after You Die (9); Do Crops Go with the Farm When You Sell It? (10); Crops Raised by Another on Your Land (11, 12); What Is a Cropper and What Are His Rights? (13); Sending Produce to the City for Sale (14, 15); Your Factor's Authority and Liability (16); His Guaranty that Purchasers of Your Produce Will Pay for It (17); Source of Authority to Tax (18); Your Liability for the Town Tax If Your Farm Is Beyond the Town Limits (19); Exemption from Town Tax (20); Tax Lien (21); Taking a Part of Your Land in Payment of the Tax (22); Tax Sales and Tax Deeds and Your Right to Redeem (23); Assessments on the Farm to Meet the Cost of Building a Highway or Sewer (24)

1. *Can the legislature restrict your trading in farm products to particular hours of the day?*

Yes, if the reason for the restriction is based on considerations affecting the public welfare. In southern states, trading in seed cotton between sunset and sunrise is made a criminal offense. This is because it is so easy to steal seed cotton from the field and so difficult to detect the thief.

2. *Must you label your product?*

Wherever the statute requires it, you must.

3. *What assurance have you that fertilizers are what they are represented to be?*

The statute regulates the sale of fertilizers in some states. By requiring licenses to sell, the labeling of fertilizers and government inspection and analysis, you are protected from fraud.

4. *If the owner of a neighboring farm permits weeds or other noxious plants to grow in his field, and they spread into your farm, can you hold your neighbor liable for the damage they do?*

Yes, under the statutes in some states. But the statute does not make your neighbor liable if a stray seed or two blows over, if he has done all he reasonably could be expected to do to get rid of the stuff. In some states, you must notify your neighbor that you will proceed against him if he does not comply with the statute, before you can hold him liable.

5. *May the state destroy trees infected with insects on your farm if necessary to protect the trees in the state?*

Yes, nor can you recover the value of the destroyed trees from the state.

6. *Where the state officers come on to your farm and destroy insects on your trees, must you pay the expense of it?*

Yes, where the statute so provides.

7. *If farm laborers working for you and tradespeople furnishing you with supplies for the growing of your crops are not paid by you, can they have the crops sold and take payment out of the proceeds?*

They can where the statute gives them that right. Such right when secured by taking the required statutory steps is called an agricultural lien. In some states, the owner of a threshing machine has a lien on grain threshed by him

to secure payment of his bill for the threshing. This is called a thresher's lien.

8. *When you make a contract of sale of your crop, must it be in writing?*

No. A distinction is made between annual crops, regarded as chiefly the product of labor, and the natural products of the soil. The latter are part of the land while growing and a contract of sale in that case must be in writing. A sale of crops is not regarded as a land contract and therefore need not be in writing. The statute requiring a writing is called the Statute of Frauds. You can find more about it by turning back to Chapter XXVIII.

9. *When you die, who is entitled to the crops on your farm, your heir to whom the lands go, or your administrator or executor who takes your personal estate?*

Your administrator or executor. Your heir takes the grasses and clover and trees, all naturally growing things which are part of the land. But crops are the product of your labor chiefly or are so regarded, and they go to the executor to pay your debts.

10. *When you sell your farm, do the crops go with it?*

Presumably, yes. But you can hold back the crops if you want to, and put that reservation in your deed.

11. *If a trespasser plants crops on your land, is he entitled to them?*

He is if he stays on the land until they are harvested. Up to the moment of harvesting they are yours. But after separation from the soil they are his, if they are really the product of his labor. Natural growths belong to you both before and after severance.

12. *How about one who has permission to raise crops on your land?*

He is entitled to them.

13. *What are the rights of one raising crops on your land on shares?*

Such a person is called a "cropper." He has no title to any part of the crop until his share is harvested and separated from your share. But he has his contract rights and can hold you liable if you without just cause interfere in any way with his growing and harvesting of the crop. After harvesting and separation of the shares, you have a lien on the cropper's share for any advances you have made to him while growing the crops.

14. *When you send your farm products to the city for sale, whom do you employ to sell them for you?*

A factor or commission merchant.

15. *Does the commission merchant have the possession of the produce itself?*

Yes. In this respect the practice is different than with most brokers.

16. *Can he sell to whomever he wishes?*

Yes, unless you instruct him differently. You can cut down his authority to any extent you wish by special instructions, but in the absence of them he can sell in his own name, to whomever he chooses, and on such terms with respect to credit as in his discretion he deems safe and expedient.

17. *Does he guarantee payment by his customers?*

He does if that is the arrangement between you. In that event he is called a "del credere factor" or a factor selling on a "del credere commission."

18. *Where does the authority to tax come from?*

From the state. In a very few instances, the state constitution provides for it. Generally authority for it is to be found in the state statute.

19. *Can the town tax your farm if it is beyond the town limits?*

No, but if the limits are extended and your farm is within the new limits it is liable unless the limits were extended for the sole purpose of subjecting your farm to the tax, and the extension added nothing to the benefits received by you.

20. *Is your farm exempt from the town tax?*

It is under some statutes if it receives no benefit from the town expenditures. In other states it pays a tax but at a less rate than the full town rate. In other states it has to pay at the full rate.

21. *Has the town a lien on your land for payment of the tax?*

It has when the statute or charter so provides. It is limited to a fixed number of years. For that period, it exists as long as there is any unpaid balance of the tax.

22. *May the town accept part of your land for a road in payment of your tax?*

It may if there is no statutory provision to prevent it. But it cannot do so if a state constitution prohibits the legislature giving power to a city to release the liability of any person to itself.

23. *How does the town enforce payment of the tax?*

The proceedings vary in the different states. But in one way or another, they lead up to the sale of the land for the taxes, a purchase at a public sale, the giving of a tax deed to the purchaser, subject to your right to get back the land upon payment of the tax, penalties and other charges connected with the sale. If you do not redeem within the time allowed by statute, the tax purchaser becomes the absolute owner of the property.

24. *Can your farm be assessed for public improvements, the building of a highway, sewer or school?*

Yes, if the statute gives the town the power and it is properly exercised. The improvement must be for a public use, and it must appear that your farm is within the district specially benefited by it, and that the proceedings authorizing the improvement, and levying the assessment have followed the statutory requirements.

CHAPTER XXXVII

THE TARIFF, INCOME AND INHERITANCE TAX

Arrival in Port as Fixing Your Liability for Customs Duties (1); Schedules and Free List (2); Finding Out What You Owe and Collecting It (3); Some Forms of Entry, Consumption, Warehouse, Transportation and Baggage (3); Getting Possession of Your Goods before You Know What You Owe (4); When You "Draw Back" from the Government Some of the Money You Have Paid It (5); Punishing You for Evading or Violating the Custom Law (6); History of the Income Tax (7); Taxing a Federal Judge (8); Taxing the President (9); Taxing the Man in the Street (10); Computing Income—Interest (11); Rent (12); Salary, Wages, etc. (13); Gifts, Legacies, etc. (14); Increase in Property Values (15); Profits on Sale of Property (16); Dividends (17); Stock Dividends (18); Money You Have Stolen or Embezzled (19); Alimony (20); Subtracting from Gross Income the Deductions Allowed (21); Paying Tax on Net Income unless Exempted (22); Inheritance Tax (23, 24)

1. *When do you become liable for customs duties on dutiable foreign goods which you are bringing into this country from abroad?*

When they arrive in port, not when they are entered in the custom house. If they are destroyed after arrival but before entry, you still must pay.

2. *What determines your liability?*

The Federal act regulating customs in force at the time your goods arrive in port. Goods are classified by the act into designated groups or schedules, and into what schedules

particular goods fall has become very generally fixed by judicial decisions, so it is not difficult to determine, generally, into what groups your goods will be placed. When you know that, you know the rate of the tax. These large groups or schedules are: (1) Chemicals, Oils and Paints, (2) Earthenware and Glassware, (3) Metals, (4) Wood, (5) Sugar, (6) Tobacco, (7) Agricultural Products, (8) Beverages, (9) Cotton, (10) Flax, Hemp and Jute, (11) Wool, (12) Silk, (13) Pulp, Paper and Books, (14) Sundries. These include not only the raw material but articles manufactured from them. If your goods are specifically mentioned in the act, they fall under the specific provision rather than into the general classes. Then there is the Free List including: (1) Antiquities, (2) exported goods reimported, provided they have not been made over into something else when abroad; (3) articles used in the advancement of science and learning; (4) personal effects of immigrants; (5) personal effects of American residents taken out of this country and being brought back, plus one hundred dollars worth of personal effects purchased abroad; (6) household effects, if they have been used as such abroad for one year or more by the person bringing them in; (7) articles to be used in certain favored manufactures in this country imported in bond, meaning by that, under a promise, secured by a bond, that they will be used in those manufactures. There are a few more articles on the Free List, but these are the principal ones.

3. *How is the amount due from you ascertained and collected?*

You must make an entry with the collector including everything you are bringing in, dutiable or free. For your convenience, different forms are provided for different purposes, depending on whether you want the goods right away, or want to put them into a warehouse under bond to pay the duties later, or want to have them sent to an-

other city under bond to pay the duties there, or want to have them go through quickly as baggage. A special form of entry is made for baggage accompanying a traveler. In this form, the provision of greatest interest is the requirement that you must include everything you are bringing in under penalty of forfeiting anything you don't declare. Then everything you bring in is inspected and dutiable goods are appraised and classified. The dutiable value is then determined, which is the appraised value plus a few other items. Then the amount you owe is computed, a bill is made out and you pay it. Provisions are made in this procedure for protests and appeals and final determinations. If you have already made a deposit in advance of the liquidation, which is the customs term for the determining what you owe, and the amount found due is less than the amount of your deposit, the balance is refunded.

4. *Will goods be delivered to you in advance of inspection and appraisal?*

Yes, upon your giving to the government what is called a "redelivery bond"—a bond made out in double the value of the goods to secure the return of the goods unopened to the government at any time on demand.

5. *What are "drawbacks"?*

Money which has already been paid to the government as duties and which you draw back from the government when you later send the same goods out of the country after having made them over into something else. The rebate is limited to 99 per cent of the duty paid.

6. *How does the government punish for an evasion or violation of customs laws?*

By prosecuting the offender criminally, by enforcing a forfeiture of his goods, or by imposing penalties. The form of the punishment depends on the nature and seriousness of the offense.

7. *What is the constitutional history of the income tax?*

The income tax law in force during the Civil War was held constitutional. The Income Tax of 1894 was held unconstitutional on the ground that it was a direct tax requiring that it be apportioned among the states according to population. The Sixteenth Amendment to the Federal Constitution, which came into force in 1913, gave Congress the power to lay and collect an income tax without apportionment among the states and without regard to any census. The Income Tax Law of 1913 was held constitutional under this amendment.

8. *Do Federal judges have to pay an income tax?*

Not on their salaries, but outside of that they have to pay the same as any one else.

9. *Does the President pay an income tax?*

Not on his salary.

10. *Who are subject to the tax?*

Everybody—unless within the exemptions. This includes corporations.

11. *In computing your gross income, do you count in interest accrued but not collected during the year?*

No.

12. *Rent?*

Yes.

13. *Compensation for personal services?*

Yes.

14. *Gifts, legacies, devises, inheritances?*

Not the principal, but any income from the principal received in this way during the year must be counted in.

15. *If property held by you and not yet sold advances in value during the year, must you count in that advance as income?*

No.

16. *But if you sell property and make a profit out of it, do you count that in as income?*

Yes.

17. *Dividends?*

Yes, even though representing not merely profits earned by the corporation during the current year, but also a division of surplus.

18. *Stock dividends?*

No.

19. *Is money you have stolen or embezzled, taxable income?*

No.

20. *Back in Chapter VI, the court decreed Henrietta alimony. Must she count that in as income?*

No.

21. *In computing net income, what deductions are allowed?*

Business expenses, interests paid out or accrued within the year, taxes paid or accrued within the year, losses not compensated for by insurance, certain items of depreciation. You cannot deduct money spent in improving your property.

22. *Do you pay the tax on your net income?*

Yes, if it exceeds the amount named in the exemption clause. If it falls below this limit, you do not pay.

23. *What is the history of the Federal inheritance tax?*

It was first imposed by Congress in 1797. Again in 1862. Repealed in 1870. Again imposed in 1898. Repealed in 1902. Again imposed in the Acts of 1916 and 1921.

24. *Are the Acts constitutional?*

Yes.

CHAPTER XXXVIII

AMERICA

Distinction between Sovereignty of the United States and Sovereignty of the States (1); Federal Powers (2, 3); Separate Functioning of Legislative, Executive and Judicial Departments (4); Apportionment of State into Congressional Districts (5); Senate's Control over the Admission of a Senator (6); Raising and Spending Money (7); Senate's Right to Punish for Contempt of the Senate (8); Expulsion from the Senate (9); Election of the President (10); Departmental Regulations as Law (11); Authority of Federal Officers and Employees (12); Jurisdiction over United States Property in the States (13); Advertising for Bids on Government Contracts (14); Liability of Government for Wrongful Acts of Its Agents (15); United States as a Creditor and Debtor (16-18); The Federal Constitution (19); Your Right to Attack the Constitutionality of a Statute (20); Power of Federal and State Courts over Cases Involving Constitutional Questions (21); Protecting Your Personal, Civil and Political Rights (22, 23); Your Property Rights (24); Your Contracts (25); Retrospective and Ex Post Facto Laws (26); Protecting You When You Go into Another State (27); Class Legislation (28); Amending the Constitution (29-31); Scope of International Law (32); What Does Extraterritoriality Mean (33); Extraterritorial Courts (also 33); When Is Intervention Justified (34); Discoveries of New Territory (35); Making a Treaty (36); Repealing It (37); Conflict between Treaties and Statutes (38-39); What Does the Neutrality Law Forbid Your Doing? (40); Privileges and Immunities of an Ambassador in Conflict with Your Privileges and Immunities, or the Lack of Them (41-43);

Becoming a Citizen (44, 53-56); *When Your Daughter Marries a Foreigner* (45); *How Citizenship Is Lost* (46); *Aliens and the Things They Can and Cannot Do* (47-48); *Excluding Aliens* (49); *Immigration Laws* (50-51); *Contract Labor Law* (52); *Taking Out Naturalization Papers* (53-56); *Answering the Census Taker* (57-58); *Post Office Regulations and Laws* (59-61); *Getting Your Machine Patented* (62-63); *Protecting Your Right to Have Full Weight and Full Measure* (64); *Your Use of the Public Lands* (65); *Acquiring a Homestead in the Public Lands* (66); *Building Levees on the Mississippi* (67); *Taking Your Case into the Federal Court* (68); *Appealing from the Supreme Court of the State to the United States Supreme Court* (69); *How the Federal Reserve System Stops Panics* (70-71); *Rendering Military Service* (72); *When Your Property Is Destroyed in Army Maneuvers* (73); *Persuading an Army Man to Desert and Buying His Army Shirt from Him* (74); *Court-Martialing Private Citizens* (75); *The National Guard* (76); *What It Is There To Do* (77); *The Stars and Stripes* (78); *The Flag of the Forbidden Color* (79); *The Modern Way of Starting a War* (80); *How We Do It* (81); *Treason—the Only Crime Defined in the United States Constitution* (82); *Pensions* (83)

- I. *What is the distinction between the Federal and state governments with respect to their constitutional powers?*

The states were in existence first. Each was a sovereignty with the general powers inherent in sovereignty. A part of these powers they granted to the Federal Government. They keep all that is left. So it is said that a state is a government of general and residuary powers, and that the United States is a government of delegated or enumerated powers. Speaking generally, Congress has no power unless you can find it in the Constitution. The state legislature has every power unless the state has given it away to the Federal Government or in the state constitution has pro-

hibited their using it. Within the limits defined the powers of the national government are supreme.

2. *Is the Federal Government confined to the enumerated powers strictly?*

It has such implied powers as are necessary and proper to carry into effect the enumerated powers.

3. *Can the Federal Government exercise its police power in the states?*

If necessary to the proper exercise of its expressly delegated powers it can, but not otherwise, as the police power is not itself delegated to the Federal Government.

4. *How does the United States Government function, and what is the distinctive thing about it?*

The Constitution divides the governing powers into legislative, executive and judicial, and each department functions separately. The separation of these powers so that one department has no control over the others is the distinguishing mark of the American system. In some details, there is an overlapping, as where the President is given a veto power over legislation, and the Senate a veto power over appointments, but, generally speaking, the three big divisions function separately.

5. *Is the apportionment of a state into congressional districts prescribed by the Constitution?*

No. The states apportion as they see fit.

6. *Has a state court jurisdiction over the elections, the election returns and the qualifications of United States Senators?*

No. The Senate is the sole judge. In the same way, the House of Representatives has sole jurisdiction over its members.

7. *How is money raised and spent by the United States?*

The necessary funds are raised by taxes subject to the

constitutional requirements of uniformity and apportionment. Money can only be spent under appropriations made by Congress.

8. *Can the Senate punish for contempt?*

Yes. It can put the offender against its dignity into prison. This extends to witnesses before its committees who refuse to answer questions. But a witness cannot be punished for refusing to answer a question which the committee had no authority to ask.

9. *Can the Senate expel its own members for disorderly behavior?*

Yes.

10. *Is the President elected by the people?*

In a general way, yes, but only because it has happened so. The constitutional method of election should not be lost sight of. The President is elected by electors from each state, and the Constitution allows each state to decide for itself how it shall choose the electors, and each state can adopt a different method if it wants to. It happens that they all have adopted the same method, choosing the electors by popular vote. But the legislature of any state still has power to change the method in its state if it wants to. The people of each state, therefore, have no inherent right to vote for President. They are doing it because their legislatures let them.

11. *How are regulations in the executive departments made and do they have the force of law?*

The head of the department may add to the regulations or cancel them. Until revised they practically have the effect of law.

12. *What authority have government officers and employees to bind the United States?*

Their authority is limited by the statute, and they must act within their authority to bind the government. Persons

dealing with the government must know what their authority is before they act.

13. *Are United States buildings within a state subject to state or Federal jurisdiction?*

Federal jurisdiction exclusively. This is true of all United States property purchased within the state with the consent of the state legislature.

14. *Is advertising for bids necessary for all government contracts for purchase of supplies or services?*

Yes, unless a public emergency requires immediate delivery.

15. *Is the United States liable for the torts of its officers and agents while they are engaged in their government duties?*

No.

16. *What are the rights of the United States as a creditor against persons owing it money?*

The same rights that other creditors have except where the statute gives it a right to be paid first before the others, as it does if the claim is for taxes.

17. *How does the United States deal with persons to whom it owes money?*

The creditor makes a claim and it is dealt with on that basis. If legal and just, it is allowed and an appropriation is made for its payment. Independently of this procedure, the creditor cannot enforce his rights against the government.

18. *Can the United States be sued in the state courts?*

No.

19. *What is the effect of the Constitution as law?*

It is the paramount law of the land. It is controlling over Congress, state legislatures, government departments,

and is obligatory upon every judge, Federal or state, and upon every individual citizen.

20. *Have you any right merely as a citizen to attack the constitutionality of a statute?*

No. You must show two things, first that the statute is being enforced, and second that the enforcement is depriving you of a constitutional right.

21. *What power have Federal and state courts over constitutional questions?*

The Federal courts have jurisdiction whenever a possible violation of the Federal Constitution is involved. On this ground they can declare a state statute as well as an Act of Congress unconstitutional, and may review the action of a state court which has passed on that question. Possible violations of state constitutions are for the state courts, and the highest court in the state is the final arbiter. No appeal from it lies on that question to the United States Supreme Court. When the United States Supreme Court has a case before it on other grounds than the unconstitutionality of a state statute but that question comes into the decision of it incidentally, it decides the point, of course, but the question is really for the state and not for the Federal courts.

22. *In what respects does the Federal Constitution protect your personal, civil and political rights?*

By protecting your personal liberty; your personal security, including your reputation, and, where the right exists (see Chapter XIX), your right of privacy; your religious liberty; your pursuit of happiness; your right to acquire, hold and dispose of property; freedom of speech and freedom of the press; and the right of assembly and petition.

23. *Are these rights absolute?*

No. Personal liberty is not a right to do as you please

without restraint. Your religious liberty is not protected by the Federal Constitution against state action. If the state constitution offers no protection, a state legislature can do what it wants in religious matters. But most state constitutions do protect. Pursuit of happiness does not mean that you can do anything at all provided only it makes you happy. The right to acquire and hold property is subject to the state's police power. Freedom of speech and press does not give you an absolute license to say and publish what you want. Even the right of assembly is subject to police regulation.

24. *When the Federal Constitution provides that your property shall not be taken from you without due process of law, does this clause protect you against forfeiture?*

No. The legislature may pass laws which will result in a forfeiture of your property if you do the thing they forbid you to do. What the legislature cannot do is to take your property away from you without paying you for it, nor can it pass an act which would operate to transfer it from you to another without consideration.

25. *Does the clause in the Federal Constitution prohibiting any state law impairing the obligation of contracts protect your contract under all circumstances?*

No. In the first place, it refers to state laws only. Congress can pass an act impairing the obligation of contracts if no other constitutional provision is violated. In the second place, your contract may be impaired by an act of the state in the exercise of its police power, or by its power to take land by eminent domain, or by its power to tax—all of them powers of sovereignty not delegated to the Federal Government. The protection of contracts against impairment is not therefore so extensive as is popularly supposed.

26. *What are retrospective and ex post facto laws and how are they affected by the Federal Constitution?*

They refer to laws which go back to a time before their enactment, giving a different effect to earlier transactions than they had under the law in force at that time. Retrospective refers to civil matters; ex post facto to criminal. The Constitution prohibits ex post facto laws; but permits retrospective laws provided they do not violate some other constitutional provision, as for example that relating to the impairment of the obligation of contracts. A retrospective law may be unconstitutional but on other grounds than its retroactive operation. Ex post facto laws are unconstitutional because they are ex post facto.

27. *When you go from one state to another, are you entitled to the protection of the state you are visiting?*

Yes, the Federal Constitution provides that such state must give you all the protection it gives its own citizens. And as a citizen of the United States, you are also protected by the Fourteenth Amendment to the Federal Constitution against any state law which abridges your citizenship rights.

28. *What is class legislation and the constitutional provisions as to that?*

A law arbitrarily discriminating against one class in favor of another is class legislation and unconstitutional. But it is the arbitrariness of it that makes it bad. If there is reason for the classification and everybody within the same class is equally affected by the law, it is not class legislation. The phrase is ambiguous and perhaps not generally understood. The distinction is therefore an important one.

29. *Is the power to amend the Constitution unlimited?*

No. There is one amendment which cannot be made. No state without its consent can be deprived of its two Senators in the Senate.

30. *Can an amendment to the Constitution be proposed only by joint resolution passed by a two-thirds vote of the Senate and House?*

No. That is one way. But another way is provided. A constitutional convention may be called if the legislatures of two-thirds of the states ask for it. It has never been done.

31. *When does the proposed amendment become part of the Constitution?*

When the legislatures of three-fourths of the states ratify it. A state legislature which votes to reject may reconsider and ratify. Whether, if a state legislature ratifies, it can later reject is a question not yet decided. States have tried it, but as enough other states have ratified without counting them in, no attention has been paid to them.

32. *Is the United States subject to law in its dealings with foreign states?*

Yes, the law governing their relations is called International Law. It deals with states, not individuals.

33. *Can one nation exercise jurisdiction in another?*

Generally, no. It may, however, if the other consents, and to the extent that it has consented. This is the meaning of "extraterritoriality." The jurisdiction is exercised by what are called Extraterritorial Courts.

34. *Are there other exceptions to the rule giving a nation a right to keep other nations from interfering with its own affairs?*

Yes. Intervention is permitted when it can be justified. A nation can intervene to enforce its treaty rights, to protect its citizens, to keep the peace when it is threatening other nations, and to put an end to inhuman practices and conditions.

35. *Can a nation acquire territory by discovery?*

Yes, if it also occupies it.

36. *When does a treaty take effect?*

When the nations who are parties to it have ratified the work of their commissioners who negotiated the treaty, and have exchanged ratifications.

37. *Can Congress repeal a treaty?*

Yes. But an Act of Congress will not be given that effect unless the intention to do so is clearly expressed or necessarily follows by implication from its terms.

38. *Does it work the other way round—can a treaty repeal an Act of Congress?*

Yes, if it is self-executing. But the intention to do so must be clear.

39. *If a treaty and a state constitution or statute are in conflict, which controls?*

The treaty.

40. *What are some of the things that the Neutrality Act forbids?*

Accepting a commission to serve one foreign country at war against another, the United States being at peace with both; enlisting in this country in the service of such foreign country; fitting out a vessel in this country for foreign service under similar circumstances. The foreign nation which brings a war vessel into one of our ports in time of war and adds to its equipment while here violates our Neutrality Law. Nor can one lawfully fit out a military expedition in the United States against a foreign country with which we are at peace. These acts are all punishable criminally.

41. *Does an ambassador's privileges and immunities mean that you cannot strike back if he strikes you?*

You can justify yourself in court if you did it in self-defense. But you cannot have him arrested.

42. *Do these immunities mean that he can go into trade, borrow money from you and you cannot get it back?*

You cannot do anything that will hurt his dignity as an ambassador or stand in the way of his acting his part as a dutiful servant to his country, but if you can find his money—the money he has used in trade, not his salary—and can recover it and still maintain the dignity status, the law allows you to do so.

43. *If you commit an assault on an ambassador, but did not know that he was an ambassador, are you guilty of assault on the ambassador?*

Yes.

44. *What makes you a citizen of the United States?*

Being born in this country of parents within the jurisdiction of the country and owing allegiance to it; or, if born abroad, having parents who are American citizens; or being citizens of a country or territory which is ceded to the United States or admitted to statehood in it; or being naturalized. Marrying an American husband does not in itself make an alien wife an American citizen. She must be naturalized, but the law makes concessions to her. She does not have to file a declaration of intention, and one year's residence in the United States instead of five is all that is required. (See below question 56.)

45. *Does an American woman lose her citizenship by marrying a foreigner?*

No, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens or unless she marries an alien ineligible to citizenship.

46. *In what other ways is citizenship lost?*

By renouncing it and becoming the citizen of another country, and by conviction for crime where the statute provides for loss of citizenship as a penalty. A pardon restores it.

47. *What is an alien?*

One who was not born a citizen and has not become a citizen.

48. *What are an alien's rights and what are the things he can and cannot do?*

He cannot vote or hold office. With this exception he has practically all the rights of a citizen. It depends, however, upon the laws of the particular state. His right to hold property is limited in some states. While the state can determine this question for itself, it cannot do anything violating its own constitution, or the Constitution, laws and treaties of the United States.

49. *May aliens be excluded or expelled?*

They cannot be by the states. They can be by the United States subject to such protection as they have under Federal statutes.

50. *Do the immigration laws affect immigrants only?*

Formerly, yes, but now the law applies to all aliens. The result is that an alien who lives in this country, goes abroad on a visit, cannot come back again unless the immigration law as applied to him allows him to come back. Their children who were born in this country can come back. That is because they are citizens. It is because their parents are aliens that the law affects them.

51. *Who are excluded from the country by the immigration law?*

(1) Anarchists. (2) Aliens who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude. Moral turpitude is not at all personal as the words are used in the statute. It does not refer to a particular immigrant's personal depravity. It refers to the nature of the offense of which he is guilty and whether it is a kind that involves moral turpitude to commit. A single act of adultery does not involve

moral turpitude, even though the person guilty of it may have it in full measure. But rape does. (3) Persons afflicted with tuberculosis or loathsome or contagious diseases. (4) Persons likely to become a public charge, even though only periodically so. (5) Persons assisted by others to come here. (6) Prostitutes and persons bringing in prostitutes. Persons getting into this country by fraud in violation of these rules may be deported.

52. *Can persons hired in another country to come here to work be kept out?*

Yes, under the provisions of what is known as the Contract Labor Law. This does not apply to domestic servants, artists, actors, lecturers, singers, members of the recognized learned professions, or to skilled labor of a kind that cannot be hired in this country.

53. *Who can be naturalized?*

Any alien living here and intending to keep on living here.

54. *What must he show?*

That he has lived in this country five years, and one year in the place where he applies, meaning that he has probably found the place he wants to live and is ready to settle down and be a good citizen; that he has behaved himself during this time; that he likes the country and hopes it will always be a happy country; that he knows how to speak English and how to sign his petition. Whether he must know the Federal Constitution in all its details, or merely behave like one who does know it is a point about which the courts are in conflict, some following the cramming rule and others the behavioristic doctrine.

55. *Where must you go to be naturalized?*

To a United States District Court, or to any state court having jurisdiction over cases in which the amount in controversy is not limited—that means the higher state courts.

56. *What steps must you take to become naturalized?*

You must sign a written "declaration of intention" to become a citizen. These are the "first papers." Then you must wait two years. Then you sign a petition to be admitted to citizenship. This petition must state the facts, showing that you are entitled to be admitted. You must attach to your petition your declaration of intention filed two years before, also a certificate from the Department of Commerce in Washington showing when and where you came into this country. You must have the affidavits of two citizens who know you and can swear that you have been here five years and one year in the district. After you have filed all of this, you must wait ninety days, because notice of your application must be posted that length of time before the hearing. At the hearing in open court, you must prove the facts you set up in your petition. You do this by the testimony of two witnesses. The court examines you and them. Then upon your taking the oath of allegiance, the court makes an order admitting you to citizenship.

57. *What is the authority for taking the census?*

The Constitution requires it every ten years. Congress determines how it shall be done and provides the ways and means.

58. *Can you refuse to give the census enumerator the information he wants?*

If the statute authorizes him to ask you the particular questions he is asking, you must answer them. You are guilty of a misdemeanor if you don't. Some of these questions are quite personal. Your sex, age, children, their ages, your business or profession, what you own and how much you own—and others.

59. *Can a postal money order be indorsed by more than one person?*

No. A second indorsement makes the money order bad, so you cannot cash it.

60. *Have you an inherent right to have your letter accepted at the post office?*

No. It is a privilege you enjoy on the government's terms, not a right you can demand. Regulations excluding certain mail matter are made, and you must conform to them.

61. *What are some of the postal offenses?*

Conveying mail matter as a privately established business; mailing obscene, defamatory or offensive or threatening letters; using the mail to defraud or to carry on a lottery.

62. *To get your machine patented, what must you show?*

That it is something really new. That it is useful. That it was not merely your skill and knowledge that were responsible for it, but there was an element of discovery about it, something that cannot be explained except on the ground that it was the result of an inventive or creative faculty of yours. You must also show that you have not given it to the public to use without applying for a patent.

63. *To whom is the patent issued?*

To the inventor only. Only he can apply for it. Others may own it, but only because of some arrangement the inventor has made with them. Such an arrangement is often made between the inventor and a corporation which employs him.

64. *Has the United States control over weights and measures?*

Yes, under the Federal Constitution, but it has never exercised it. Control is left with the states. They adopt standards, make statutes regulating the inspection and sealing of weights and measures belonging to tradespeople using them. Other statutes require weighing and measuring before sale of certain articles as coal and lumber, and an official weighing and measuring in certain cases. Other

statutes punish persons who use unauthorized or unsealed or false weights and measures.

65. *What use can you make of public lands?*

You can pasture cattle on it or cut hay from it until the government stops you. You can grow crops and harvest them and the crops are yours against another. You cannot fence or otherwise enclose the land.

66. *What rights do you have when you make entry on public land which has been opened to entry?*

All the rights of ownership if you have paid the purchase price except the legal title which comes later when the government issues its patent. Your right to a patent may be defeated if the land has not been opened to entry or you have not performed the conditions required by the law. But if you have done everything to be done and the lands are open to entry, you are entitled to your patent and until you get it, you are practically the owner.

67. *On whom rests the duty to build and keep in repair the levees on the Mississippi River?*

Originally the individual landowners had to do it. After the Civil War, the state took it over. Since 1879, the Federal Government has helped. In the act just passed, the Federal Government pays practically the entire cost. The state acts under its police power; the Federal Government under the commerce clause giving it jurisdiction over matters of foreign and interstate commerce.

68. *When can you have your case tried in a Federal court as distinguished from the state courts?*

Whenever it involves any right you may have under the Federal Constitution, laws or treaties, or relates to matters peculiarly within the Federal jurisdiction, or when your case is one to which the United States or, with some exceptions, a state other than the one you live in, is a party. If the parties to the action live in different states you can

go into the Federal courts. If all live in the same state you cannot.

69. *When can you appeal from the supreme court of the state to the United States Supreme Court?*

Whenever rights under the United States Constitution, laws or treaties are involved, or matters within the Federal jurisdiction.

70. *How does the Federal Reserve System stop panics?*

By bringing the banking cash surplus of its member banks to the place where it is wanted at the time it is wanted. This is done by giving the Federal Reserve Board power to permit member banks to rediscount the discounted paper of other member banks at rates of interest fixed by the Board. In this way, the free available surplus, seeking employment, goes to the point where it is needed. Cash surpluses are put to use. Sections of the country needing money get it. To make use of a familiar figure, it brings money to market. And the consumer gets what he wants at a fair price.

71. *Can member banks with cash surplus be required to rediscount?*

Yes, whenever five of the seven members of the Federal Reserve Board vote affirmatively to do so. To change the figure, the reserves can be ordered out when needed. In this way stability is assured if emergency arises.

72. *Must you render military service to the country when called upon to do so?*

Yes, if you are physically fit for the service and are not one of those exempted by the statute.

73. *If your property is destroyed through the military operations of a commander of United States forces, can you recover its value from the commander?*

If the destruction was due to military necessity, no. But the burden is on the commander to show the necessity.

74. *If you are not in the army but know an army man, what are two things you must not do to him?*

You must not persuade him to desert, and you must not buy any army clothing from him. Both are criminal offenses.

75. *If you are a private citizen, can the army court-martial you?*

Not in time of peace. In war time it can if you are charged with certain offenses, holding communications with the enemy and other acts of a treasonable nature.

76. *What is the militia as distinguished from the army?*

Citizens ready on call to go into military service, the service being temporary only, terminating with the emergency. Everybody belongs to the unorganized militia. The organized militia is called the National Guard and is governed by the National Defense Act of 1916. Every citizen of sufficient age and capacity is liable to be called into the service. There are exemptions. Persons in certain employments do not have to serve. Also persons holding religious views opposed to war. But these last have to go into any service which the President declares to be noncombatant. The National Guard is generally recruited by voluntary enlistment for a fixed term. Sometimes a sufficient number to keep a National Guard unit up to required strength are drafted from the unorganized militia.

77. *What does the National Guard do when called upon?*

Puts down disorder and enforces the laws.

78. *What deep significance attaches to the Stars and Stripes?*

It is a symbol representing the sovereignty of the United States. The law recognizes such an offense as bringing contempt upon the flag and it is punishable on like grounds as contempt of court. It is the bringing of contempt on what the flag and court stand for that is punished.

79. *Is there such a thing as a flag of a forbidden color?*

Yes, under some statutes, and red is the color. The reason for that, too, is the symbolical nature of the color. It is associated always with blood and revolutions and terror.

80. *How is a war started?*

The old way was either by hostile act or by declaration. Now the rule is—under the Hague Convention—declare first, then fight.

81. *In our country, who declares war?*

Congress, and only Congress.

82. *What is the only crime defined in the United States Constitution?*

Treason. The definition is, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." There have been other forms of treason, but this definition rules them out. There must be an actual levying, or adhering, or giving aid. A conspiracy to overthrow the government by force, so long as it is nothing but a conspiracy, is not treason. But when the actual levying, or adhering, or giving aid takes place, there is treason, and it is not necessary for a conviction to show that it was successful.

83. *What are pensions and how are the rights to them determined?*

They are bounties from the government. The rights to pensions are fixed by statute. Under such statutes, they are granted upon application. The application must be sworn to by the applicant and a declaration made, stating the facts entitling him to a pension. Printed forms are furnished the applicant and instructions for filling them out. The statute protects the pensioner by fixing the fees of pension agents and requiring that pension money shall be

paid to the pensioner only. Pensions under the Federal statute are administered by the Commissioner of Pensions in Washington, and communications with reference to pensions should be addressed to him there.

CHAPTER XXXIX

STATE, CITY AND TOWN

Sovereignty of the State, and a Cross Reference (1); Nature of the Powers of the Legislature (2); Investigations and Power over Witnesses (3); Agreements between States (4); Carrying on Public Improvements (5); Governor's Power to Remove State Officers (6); State Owning Land in Another State (7); State's Power to Contract (8); Authority of Officer to Make the Contract (9); State's Liability for Its Agent's Wrongful Acts (10); State's Power to Tax and Spend Money (11); City the Agent of the State (12); Charter Its Organic Law and Power of Attorney (12); Annexation of New Territory (13); Ordinances (14); City Officers (15); City Departments (16); City Property and Contracts (17); Taxes, Assessments and Bonds (18); City's Liability for Its Torts (19); Contracts (20); Purpose and Nature of the County Government (21); County Commissioners or Supervisors (22); Powers of the County (22); Towns and Townships, What They Are, What They Do and How They Do It (23)

1. *What is the nature of state sovereignty and how is it related to the Federal Government?*

The early part of the preceding chapter goes into this at some length.

2. *What is the nature of the powers of a state legislature?*

It can do anything that is governmental in its nature not prohibited by its own state constitution and by the Federal Constitution. It is not necessary that the power should have been granted by the state constitution. The power exists if it is not prohibited. Its police power is one of the most important.

3. *May the legislature order investigations?*

Yes, and may summon witnesses, may require them to testify and punish them for contempt if they do not.

4. *Can one state enter into a compact or agreement with another?*

Yes. The Federal Constitution says that no state shall do it without the consent of Congress, but the courts have said that this provision applies only where interests of the Federal Government are concerned. Where not concerned, the consent of Congress is not necessary. The Port Authority compact between New York and New Jersey is a striking illustration of interstate agreements.

5. *Can states carry on public improvements, as for example, building parks and park boulevards through the state?*

If the constitution does not prohibit, they can. Some state legislatures are prohibited from doing it.

6. *Can the governor remove state officers from office?*

No, unless the constitution or a statute gives him the power.

7. *Can a state own land in another state?*

If the other state objects, it cannot; in the absence of objection, it can. If it buys the land, it owns it as an individual. It can exercise no sovereignty over it.

8. *Can a state contract?*

Yes, but it cannot contract away its sovereign rights, its police power or power of eminent domain.

9. *What should you do before making a contract with the state?*

Be sure that the officer you are dealing with has authority to make it. If he has no authority, the contract has no binding force.

10. *If you have been injured by some negligent or wrongful act of a state officer or employee, what is your remedy?*

Appeal to the legislature. You cannot sue the state.

11. *Is there any limit to a legislature's power to tax or spend money?*

It depends entirely on what the state constitution says. If it says nothing, there is no limit.

12. *Can a city govern itself without interference from the state?*

It has no inherent right to do so. Generally it does have a greater or less degree of home rule, but only to the extent that the state permits. The state is the source of every power it has. What those powers are depends upon its charter, which is its organic law. The city is a state agent authorized to carry on the business of local administration for the state, and the charter is its power of attorney. When the state issues its orders, the city must obey.

13. *Has the legislature power to extend the limits of a city, resulting in the annexation of new territory?*

Yes, it has absolute power to do so, regardless of whether the city or the inhabitants of the annexed territory want it. The will of the sovereign is supreme. But the way it executes that power is usually by enacting a general law providing for annexation, and, under that general law, the city and the inhabitants of the territory to be annexed have something to say about it. They have no inherent power to object, but the state has granted them a measure of control over the matter. What their powers are can only be determined by consulting the statute.

14. *How does the city act?*

Through a city council and by ordinances passed by the council. Where the ordinance imposes extraordinary finan-

cial burdens on the inhabitants it is generally provided that the ordinance must be submitted to a vote of the people and ratified by them before it can become effective.

15. *Who are the officers of the city?*

Mayor, treasurer and councilmen or aldermen. Whether department heads are city or state officers depends upon the charter or statute. In some cities, the head of the police department is a state commissioner.

16. *What are the city departments?*

Public works, police, health, fire, streets and sewers, water and light, aqueducts and subways, wharves and docks, parks, education, charities and corrections. There are other departments with particular functions, and not all of those named are to be found in every city.

17. *Can the city acquire and hold property and make contracts?*

It can for municipal purposes and wherever necessary to carry into execution its charter powers. Where the charter stipulates how the city shall make a contract, the city must follow the charter method. Also in all that it does, it must act through properly authorized officers, and where the charter names them, only through those named.

18. *How does a city raise funds to carry on the administration of all its departments?*

By taxes and assessments and by the issuance of bonds. Taxes are raised for the current general expenses. The method of levying and collecting taxes has already been described in Chapter XXXVI. Bonds are issued to provide funds generally for the construction of public works of a permanent character. Assessments are made to raise funds for public improvements benefiting only some section of the city, connected with the opening of a new street or the extension of a sewer, and the assessment is laid only on the property which receives the benefit.

19. *Is a city liable for the negligence or wrongful acts of its officers and employees?*

Yes, the same as a private corporation or individual. The city is not a sovereignty, and you do not have to get its consent in order to sue it.

20. *Can the city be sued if it breaks a contract?*

Yes.

21. *How is a county created and for what purpose?*

It is a local division of the state, given a corporate existence to carry on the administrative duties of the state within the territory marked out. It is a territorial division, not following the lines of density of population. The boundaries are fixed by the state. There is no charter as in the case of a city. Powers are prescribed in a general law. It is not strictly a municipal corporation as a city is, but in some respects it is like it. It is sometimes called a quasi-municipal corporation.

22. *How does the county act?*

Through county commissioners or supervisors, and by orders passed by them. In a general way, the powers of a county to hold property, make contracts, raise funds by taxes and spend money are the same as that of cities.

23. *What is a town and township?*

Figuratively, the town is a little city, and the township a little county. Cities represent development and growth. Originally the units of population were small, and in many places they still are. They are called towns and villages, and under the law have a quasi-corporate existence, all that they need to carry on the work they have to do. They can build and maintain roads and schools, and can raise money with which to do it by taxation. They act through town boards and by orders made by them. They can hold property and make contracts for town purposes, and are liable for their negligent acts and broken contracts. Town-

ships are arbitrary subdivisions of counties with artificial boundaries, including a number of towns and villages, acting through an elective official who is sometimes called a supervisor. He and other supervisors of other townships in the county constitute the board of supervisors governing the county.

CHAPTER XL

ELECTIONS AND ELECTION BETS

Your Privilege of Voting (1); Your Qualifications for Voting (2); Errors in Registration; Your Right to Assume That Your Name Is on the List (3); Your Right to Run as the Republican, Democratic and Independent Candidate at the Same Time for the Same Office (4); Having Been Defeated for the Republican Nomination, Can You Run as an Independent? (5); Complying with the Primary Laws to Get Your Name before the People (6); Putting Voting Machines into New Districts (7); The Things That Count in the Conduct of an Election (8); The Only Issue in an Election Contest and Some Matters That Are Not in Issue (9); Campaign Contributions, Especially Those Which Come from the Corporations (10); Election Law Offenses and the Importance of Knowing Your Statute (10); Winning Your Election Bet and the Chances of Your Collecting It (11)

1. *Have you an absolute right to vote merely because you are a citizen?*

No. The right of suffrage is a franchise granted to you by the state. Whenever the right is given to you on certain conditions, you must show a performance of the conditions before you can claim the privilege.

2. *What are some of the conditions?*

You must be twenty-one years old; a citizen of the United States and the state; a resident the prescribed length of time in state, county and election district where you wish to vote. You must measure up to the educational tests prescribed. If there are none, you can vote even though illiterate. Under the Constitution, it does not matter

whether you are a Methodist, Baptist, Episcopalian, Catholic or Jew. You do not have to own property, for the general elections. Some state statutes require it for the state elections. It depends on the state statute whether you must be a taxpayer. In these statutes, taxpayer means one who has paid, not one who is going to. Amanda can vote. Conviction for crime disqualifies *if* the crime, under the statute, carries that kind of punishment. Betting on an election disqualifies if the election you bet on is one you can vote in and *if* the state constitution or statute says so. If the constitution is silent and your statute has nothing about it, you can bet and vote too. You can bet and then vote even though the statute tells you you cannot, *if* the constitution is silent. The reason is that where a constitution fixes the qualifications for voting it impliedly prohibits the legislature adding to them. Paupers are disqualified in some states, but if nothing is said about it in constitution or statute, they can vote. Idiots and lunatics cannot vote, but feeble-minded persons can if they know what they are doing when they vote.

3. *When you have once registered, can you assume for future elections that your name is on the list, or must you verify it for each election?*

Once on the list, your name stays until a revision or "purging" is made in accordance with some requirement of the election statute. It depends, therefore, on the terms of your state statute how frequently you have to look it up. Another point on registration is this: you cannot be deprived of your right to vote (even though a privilege it is a right after the state has granted it to you) by the errors or irregularities of the election officers in the placing of your name on the list.

4. *Does your being a Democrat disqualify you for nomination as the Republican candidate for an office?*

It does in some states, not in others. In some states,

depending on the statutes, you may stand as the candidate of both parties. And even then you can be nominated on petition by the independents.

5. *If you have failed to get the Republican nomination, can you run as an independent?*

Some statutes say no. A defeat puts you on the shelf for that election.

6. *In what ways do the primary laws affect your candidacy?*

You must go to your statute to find out, and it is important that you should. Generally the statute imposes certain requirements which you must meet to get your name before the people, such as a paper announcing your candidacy, making oath to your qualifications, and giving the names of friends serving on your campaign committee.

7. *Can voting machines be dispensed with and paper ballots be again used under any circumstances?*

Yes, if a certain expertness in the use of the machine is required and the time before election is too short to instruct the voters in the use of it, the court may order to be used the old paper ballot system with which the voters are familiar.

8. *Is an election void because not enough voting booths were provided for all who wished to vote?*

No, provided a way is found to preserve secrecy in the voting. The important considerations in the conduct of an election are secrecy for the voter while casting his vote, absence of intimidation, bribery, fraud or violence, a fair count and preservation of the ballots for use in possible future contests.

9. *What is the sole issue to be tried out in an election contest?*

Which candidate received the largest number of votes. Anything bearing on that is a proper subject of inquiry.

Anything that will throw out votes that have been counted, or bring in votes that have not been counted is pertinent. But questions as to a candidate's eligibility or the validity of the law under which the election was held do not affect the count in any way, and those questions are not open, therefore, in an election contest. Fraud or bribery, if proved, throw out the affected votes. So does a mistake in the count. These matters are open to inquiry for that reason.

10. *Can the officers of a corporation contributing to campaign funds be punished criminally?*

It depends entirely on the exact terms of the statute. A law forbidding contributions to secure the election or defeat of a candidate does not prohibit a contribution to put over or defeat a proposition for issuing bonds or spending money. Laws prohibiting corporations having Federal charters do not prohibit corporations having state charters. Wherever offenses against the election laws are being discussed, it is well to read over the laws first and see what they say on the point you are discussing.

11. *If you place a bet on your candidate winning and he does win, can you collect your bet?*

Not if you had a right to vote in the election on which you made the bet. Public policy demands that you keep your voting interests and your financial interests separate when it comes to betting. One should not be allowed to influence the other. If neither of you could vote in the election on which you made your bet, then the question has to be decided on the basis of its being a wagering contract, and the authorities are in conflict on that. Some would let you recover. Others not. What effect your betting has on your right to vote is another question entirely. You will find out about that in question and answer 2 of this chapter.

CHAPTER XLI

MONOPOLIES

What Is a Monopoly? (1); Two Kinds; Public Service Corporations and Trusts (1); Monopoly by Franchise, the Public Service Kind (2); The Two Big Questions; Authority to Grant the Franchise; Has a Franchise Been Granted? (2); Monopoly by Combination or Agreement, the Trust Kind (3); Common Law Prevents One Rascal Enforcing the Agreement against the Other (3); But It Takes the Sherman Anti-Trust Act to Make Them Both Criminals and to Break Up the Practice (3); Some Forms of Unlawful Combination Reached by the Sherman Act (4)

1. *What is a monopoly?*

It is the concentration into a single controlling unit of previously competing businesses resulting in the stifling of competition and power to increase prices at will. Monopolies are of two kinds, those resulting from the grant of a franchise and those resulting from the acts and agreements between competing individuals or corporations. The familiar examples of the first kind are the municipal public service corporations, the telephone, water, electric light and power, gas and street railway companies. The common example of the second group is the large so-called trust.

2. *How is a monopoly by franchise created?*

By act of the legislature or by ordinance passed by the city council. The first question to answer is the question of authority to grant an exclusive franchise. The second is whether one has been granted. Because unless the authority exists and an exclusive franchise is granted, no monopoly

exists. In answering the question as to authority, it is necessary in every instance to go back to the constitution of the state. If that should say, and some of them do, that the legislature shall not make an "irrevocable grant of special privileges or immunities," the inquiry stops right there. For the grant of a monopoly is surely an "irrevocable grant of a special privilege," and if the legislature cannot make it, the city surely cannot. If the constitution does not stand in the way, the next step down is the legislature. In its grant of authority to the city—and that means the statute or charter—has the legislature forbidden the city to do this thing or has it given authority to do it? If it has forbidden the city to do it, that stops it. If, on the other hand, it has granted the city that power, then we are ready to take up the second question: Has an exclusive franchise been granted? It may be granted by the state or city. So we must look at the statute or ordinance in which the grant is made. The rule is that an exclusive franchise can only be granted in express terms. If there is an express grant of an exclusive franchise, the monopoly exists. If the express terms are not there, the monopoly does not exist.

3. *If individuals or corporations combine or enter into an agreement to stop competing and pool their interests, is that combination or agreement void?*

Yes, and it does not take a statute to make it void. It is void anyway—void at the common law as the lawyers say. But the only effect of declaring it void is that the agreement cannot be enforced in court. If one party to it is complaining that another is not living up to it, he is helpless. The courts will not help him. But how about you, a consumer, perhaps collectively the greatest sufferer of all? What good does it do you to have one of the rascals whip the other in court? The common law does not reach very far towards helping you. That is the reason for the Sher-

man Anti-Trust Act passed by Congress in 1890. Under the statute, the government, representing the public interest, takes hold of the situation, breaks up the combination altogether, forbids it doing business on that basis and punishes the offenders.

4. *What are some of the common forms of unlawful combination?*

Pools, an agreement not to compete. *Trusts*, generally a transfer of shares of the combining corporations to a board of trustees which manages the combined business. *Holding Corporations*, where a new corporation is formed to function as the board of trustees do in the trust. *Consolidating Corporations*, but this is not unlawful; corporations can consolidate—it depends on the purpose with which they do it, whether good or bad: if it is simply a device for doing what the trust does it is bad. *Acquisition of stock in another corporation*, here again a perfectly lawful thing to do, but if simply a device to accomplish what the trust does, it is bad. *The same group of men securing stock in competing corporations*, here again, a lawful act capable of perversion. *Corners*, the Anti-Trust Act making all who participate criminally liable.

CHAPTER XLII

PHILANTHROPY

The Nature and Purpose and Essentials of a Charitable Trust (1); Some Uses for Which a Charitable Trust Can Be Created (2); Statement of the Charitable Purpose in Your Trust Deed (3); Court's Appointment of Another Trustee if the One You Named Cannot Accept (4); You Must Not Name Your Beneficiaries Individually (5); When the Trust Cannot Be Carried Out in Just the Way You Planned—Cy Pres Doctrine (6); When the Trust Fund Goes Back to Your Heirs (7); Essentials of a Valid Gift (8); Can You Make a Gift to Take Effect upon Your Death? (9); When You Deposit the Funds in a Bank to the Credit of Your Donee (10); When, on Your Deathbed, You Give the Nurse Something to Keep for Your Donee, Telling Her to Give It to Him When You Die (11); Dedicating Your Land for a Public Use (12); Uses for Which Land Can Be Dedicated (13); Form of Dedication (14); Must the City Accept Your Gift? (15); Burdens Assumed by the City When It Accepts (16); When the Land Is Used for Other Purposes Than the One You Named (17)

1. *What is a charity?*

It is a gift of money or property in trust for a public use. It differs from an ordinary trust. The beneficiary in an ordinary trust must be named. In a charitable trust, the individuals to receive the benefit of your bounty must not be named. But the purpose of the charitable trust must be clearly defined and it must be a charitable purpose.

2. *What are some of the charitable purposes for which a gift can be made?*

Relief of the poor and unfortunate; education and the

advancement of learning; religion; governmental purposes such as public improvements.

3. *Must the trust deed state the charitable purpose?*

Yes, and with sufficient certainty and clearness so that a court can enforce it in the way that the donor intended. This does not mean that the purposes shall be stated in detail. The trustee under the direction can work out the details, even better in the generations to come if the details are not placed in the trust deed.

4. *If the donor names a trustee and for some reason the trustee cannot accept the trust, does the charity fail and the money or property go back to the donor or to his heirs?*

No. The court will itself select and appoint a trustee.

5. *Does the rule requiring that a charitable trust must be for a public use and that it must not be for particular individuals, mean that it must be for the benefit of anybody in the whole world who may wish to claim a benefit under it?*

No. It may be made for the benefit of a group, even a very small group, as long as the individuals to benefit by it remain indefinite. A gift for the support of indigent old men in a particular county named in the deed is a good charity even though that county happens to be the smallest and the wealthiest county in the United States. There may be a very few indigent old men there, but as long as the deed does not name them individually, it is a good charitable trust.

6. *If it becomes impossible or impracticable to carry out the work of a charity in just the way the donor intended and expressed in the deed of trust, does the money or property go back to his heirs?*

No. If there is a general charitable purpose well defined in the trust deed, the court will direct the trust to be en-

forced in some other way than that provided for in the deed, but which will still be within the donor's general charitable purpose. This is why it is essential that the general purpose should be well defined. A charity may be a century old. The particular hospital for whose use it was originally given may have gone out of existence. The court decrees that it shall go to another hospital, and the fund is saved to do the work that its donor intended it should do. The rule of law permitting this to be done is known as the Cy Pres Doctrine.

7. *Does the charitable fund in any case ever go to the heirs of the donor?*

If the trust deed itself provides that in a certain contingency named, the property shall go to the donor's heirs, then it does whenever the contingency named happens. Again, if it should happen—although it is difficult to imagine a case where it ever could—that it was impossible to carry out the donor's expressed general purpose, then the property would go to the heirs. It is interesting to know that in England where the King has a prerogative power over charities, a charity does not fail even though it is impossible to carry out the donor's general purpose. In such case, the Lord Chancellor, as the keeper of the King's conscience, applies the fund to some other charitable purpose. Our conscience works differently.

8. *When is your gift to another really a gift, a gift that will be upheld in law if any one attacks it?*

It is a valid gift in the law if the person to whom you made it can show that you intended it as a gift, that it was an absolute gift with no conditions attached to it, that you made an actual delivery of it to him, that it went into immediate effect as soon as delivered, and that you gave it to him without reserving any power to take it back. Then, of course, he must show, if it is attacked on that ground, that you knew what you were doing when you

made the gift, and that you were not coerced or fraudulently induced to make it. It seems like a lot of things to prove if you want to keep your gift. But, after all, if in fact it was a real gift, all of these things are easily proved. It is only in the few suspicious cases that a difficulty arises, and in such cases it should be made difficult if the suspicion is to be altogether removed.

9. *Is your gift valid if you stipulate that it is to take effect upon your death, you in the meantime retaining control over it?*

No. It has no effect whatever, and when you die your donee is not entitled to the property. *But*, if you make a delivery of the property unconditionally with no power reserved to take it back, but you request the person to whom you give the property to put it away and not use it until you die, such a gift is valid. You can postpone the use and enjoyment of your gift until your death provided you give the control of it at once to your donee and reserve no power over it to yourself.

10. *If you make your gift in the form of a deposit at the bank, is it binding?*

Yes, provided you deliver the pass book to your donee, and all the other essentials to the validity of the gift exist.

11. *If you make your gift on your deathbed in expectation of death, by giving it to some one near to keep for the person to whom you are making the gift, is that a valid gift?*

Yes, even though the person to whom you make the gift knows nothing about it until after your death. This is called a gift "causa mortis." Other gifts, to distinguish them from deathbed gifts, are called gifts "inter vivos."

12. *What does the word "dedication" mean?*

It is a gift of land for the use of the public.

13. *What are some of the public uses to which land can be dedicated?*

The most frequent instance of it is the dedication of land for highways and parks. Dedication can be made for cemeteries and for religious and educational uses.

14. *In making the dedication, is there any form that you must follow?*

A dedication under the statute must follow in every detail the directions and requirements of the statute, although a substantial compliance will do. These requirements relate to the map or plat referred to in your deed, the indorsement or certification required to insure its accuracy, matters of description of the land in the deed, and the execution and acknowledgment of the deed itself.

15. *Must the land be accepted?*

Yes. You cannot make a city take something it does not want to be burdened with.

16. *What burdens are imposed on the city when it accepts?*

The duty to keep the highway or the park in repair, and the liability for injuries received by any one caused by the city's failure to do so.

17. *Can the land be used for any other public use than the particular public use for which it was dedicated?*

No. Whenever there is an abandonment of the use to which land was given, the title to the land goes back to you and your heirs.

CHAPTER XLIII

COPYRIGHT

Things You Must Do to Secure a Copyright for Your Book (1); *When Is a Book Not Entitled to Copyright?* (2); *What Disqualifies You from Owning a Copyright?* (3); *How Long Does Your Copyright Last?* (4); *Your Assignment of Your Copyright* (5); *Licensing Another to Use What You Have Written* (6).

1. *In securing a copyright for your book, what are the steps you take and in what order do you take them?*

There are no steps to take until you publish your book. When it is published, it must have printed on it the notice of copyright, your name and the year. This notice must appear on all copies subsequently sold. As soon as your book is on sale with the notice of copyright in it, your book is entitled to copyright protection, and your copyright dates from the day you actually place the book on sale or distribute it publicly. There are other things to do but they come later. After publication, you send two copies of the best edition of your book to the Copyright Office in the Library of Congress in Washington. You address the books to the Register of Copyrights, Washington, D. C. While you do not have to do this in order to secure your copyright, you do have to do it before you have any standing in court to protect your rights under it. You must do it promptly. If you fail to do so, the Register of Copyrights sends you notice to do it and you have to do it then within three months, and if you do not do it in that time, you lose your copyright and have to pay a penalty. With the two copies you also send an application for copy-

right on a form sent you from Washington. With the application goes also your affidavit that the book was printed from type set in the United States. This is all. You must of course pay the registration fee. Your copyright now cannot be defeated except by showing either that the work is one not entitled to copyright or that you are a person not entitled to have it.

2. *When is a book not entitled to copyright?*

When it has been copied directly from or is an imitation of another work. You must yourself be the real author of what you write. The material you use need not be original. It is sufficient if the arrangement and plan of it is your own. Your book must be useful. It must have literary or artistic merit, but that is not saying that it must have any particular degree of literary or artistic merit. A very little merit will do. It must not be indecent or immoral. It must not be libelous or blasphemous. It must be manufactured in the United States.

3. *What qualifications must you have to be entitled to a copyright?*

You must be the author or the proprietor, or the executor or administrator of either, or the person to whom the author or the proprietor has assigned his rights in the book. You must be a citizen of the United States, or if an alien, you must reside here, or, if you live abroad, you must show that the country you live in allows our citizens to take out copyright and that the President of our country has made a proclamation that such reciprocity exists.

4. *How long does your copyright remain in force?*

Twenty-eight years. If you apply for a renewal at the end of that time, your copyright remains in force for another twenty-eight years.

5. *Can you assign your copyright to another?*

Yes, even to a person who would not be himself entitled

to a copyright. The assignee is then the owner. The assignment must be in writing, signed by you and recorded in the Copyright Office.

6. *Can you license another to use what you have written?*

Yes. Here, of course, you still remain the owner.

CHAPTER XLIV

DEATH

A Way to Live to One Hundred; The Presumption of Life; Amanda Shortens It by Ninety or So; The Presumption of Death; You and Amanda Disappear Together and Are Not Heard of Afterwards; The Presumption of Survivorship

Your business well established, your property wisely and safely invested, the library in the village endowed, your memoirs published, your will executed, you engage passage for yourself and Amanda to Cherbourg for a well-earned vacation in foreign lands. From your many and varied contacts with the law in an active business life, you have acquired among your other possessions a not inconsiderable knowledge and a lively interest in any question of law that an unusual situation suggests.

On deck one evening you present this question to Amanda—the mystery of the ocean or the distance from home occasioning it: “If I disappear, Amanda, from home and you’re not with me this time, and the years go by and I never return, is there ever a legal death, or, in the law do I go on living forever and ever?”

Amanda does not know and does not care. But you know and are insistent, too, that she should share your knowledge. “The law presumes that I live much longer than I probably would—one hundred years some say, and others ninety. But it doesn’t matter, for not many years would pass, perhaps not many months or weeks, when you would begin your search, and *when once that search com-*

mences, the presumption of life is overcome by another presumption, the stronger presumption of death. To be sure, it doesn't come at once. It is held in abeyance for seven long years. For seven years no letter comes. For seven years you do not hear from me or of me. For seven years you continue your search. At the end of that time, Amanda, I am dead in the law." There is no response from Amanda. Perhaps—perhaps she has not been listening.

Once more, the situation is compelling, the distance from home increasing, a deeper mystery settling over the waters. "Amanda"—no answer—"Amanda." "Yes?" "This ship may collide with—perhaps with an iceberg to-night—the boat disappears and all of us with it. Not a trace is left. There are heirs at home—your heirs, Amanda, and mine. There's that property in St. Andrews that never went into the will. Who takes it? Your heirs or mine? That, too, depends on a presumption of the law—a presumption of survivorship, they call it. If I survive you, my heirs take it. If you survive me, your heirs are entitled. But nothing is ever heard of us. No one knows. The law, forced to adopt some rule, says there is a presumption that the stronger survives—and in the law I am the stronger and you the weaker. I am sorry, Amanda, for your heirs."

PART III

UNDERSTANDING THE USE OF LEGAL TERMS

DEFINITIONS and explanations in the text of Part II are not repeated here, but for the convenience of the reader the words and phrases there explained or defined are listed and a reference given to the pages where they may be found. To these are added a few other words or phrases of not altogether obvious meaning which one may come across in a day's work or reading. Words in common, everyday use are not listed where the legal definition of the word is in line with its well understood meaning. Criminal law terms are omitted except a very few of general interest relating in most instances to its administration.

The writer's aim in this part of the work has been to give the reader not definitions, but an understanding of the use of certain legal terms which, without the explanation, might not be clear to him.

LAYMAN'S LAW DICTIONARY

Abridgment of citizen's rights: lessening or interfering with your citizenship rights.

Abrogating a law: repealing it.

Absconding: leaving home and hiding yourself so that your creditors cannot find you.

Absolute estate in perpetuity: see page 175.

Abstract of title: see page 44.

Abutting landowner: owner of land adjoining a highway. See **Adjoining landowner**.

Acceptance: offer: see page 152; gift: see page 246; dedication of land: see page 248; bill of exchange: see page 163.

Accommodation paper: see page 166.

Accord and satisfaction: see page 85.

Accounting: see page 133.

Acknowledging a deed: going to the notary and making oath that you signed it.

Act of God: inevitable accident, something you are not responsible for.

Action in court: the proceeding which you bring in court against Smith, whom you hope in this way to compel to do what you want. You are the plaintiff. Smith is the defendant. Sometimes you are called the petitioner. Then he is the respondent.

Acts of the legislature: statutes.

Actuary: the insurance company's statistician who makes the calculations on which the amount of your premiums are based.

Ad damnum: the amount you tell the court you think Smith ought to pay you. You write it into the formal claim against him you file in court.

Ademption of a legacy: when you change your mind and cross it out of your will.

Adjoining landowner: your neighbor whose land is next yours. See **Abutting landowner**.

Adjustment of loss: determining the amount of your fire loss. Done by the insurance company.

Administrator: see page 182.

Admiralty: (a) law involving ships and their cargoes. Also the courts which try those cases. (b) The English equivalent for our Navy Department.

Adoption of child: see page 32.

Adult: no longer an infant: see page 19.

Adulteration: see page 76.

Adultery: sexual intercourse between a married person and one other than husband or wife.

Advancement: giving Timothy his share of your estate, or a part of it, before you die.

Adverse possession: see page 54.

Advisory opinion: an opinion on a point of law given by the highest court of the state to the legislature when it asks for it.

Affidavit: see page 118.

After-acquired property: see page 60.

Agent: see page 138.

Aggravating damages: adding to the injury, increasing your liability therefor.

Alibi: being somewhere else than they say you are.

Alias: assumed name. Also a second writ or order of court taking the place of the original one.

Alien: a person of foreign birth and not naturalized.

Alienation of property: transferring it to someone else.

Alienation of affections: robbing a husband of his wife's affections, or a wife of her husband's.

Allegations: recitals of fact in the statement you file in court placing before the court your side of the case against Smith.

Allotment of shares: shares of stock set apart for you.

Allowance: a fixed sum you give each week to Amanda or Timothy.

Alteration of contract: changing it.

Amendment of statute: changing it.

Amicus curiae: a lawyer who for some good reason is allowed by the Court to argue a case in which he is not retained.

Annuity: see page 196.

Answer: a statement filed in court by Smith in which he denies your story, or admits it and gives excuses for his conduct.

Ante-nuptial contract: you make it with Amanda before she marries you, and in it you provide an independent income for her or for the children you hope to have.

Anti-Trust Act: see page 243.

Appeal and error: the procedure which the statute requires you to follow in taking your case, which has gone against you in the court below, to a higher court in order that the mistake which you are sure has been made may be corrected.

Appearance: a paper you file in court to let the court and others interested know that you are a party in a particular case and would like to be notified when it is tried.

Appellate court: that "higher court" referred to above in **Appeal and error**.

Apportionment: used in several ways: (a) compensation due you under a partly performed contract; (b) division of rent among those entitled; (c) in Congress, telling each state how many Congressmen it may have; (d) in taxation, dividing direct taxes among the states according to population.

Appraising property: fixing its value in money.

Appurtenances: incidental rights belonging to a particular piece of property.

Arbiter: judge.

Arbitration and award: see page 83.

Arraignment of the prisoner: calling upon him to answer the charge against him.

Arrest: see page 102.

Arrest of judgment: where the case has gone against you, but for some good reason the court refuses to enter up judgment against you.

Articles of association: constitution of an unincorporated association.

Articles of partnership: the partnership agreement constituting its organic law.

Articles of war: constitution of the army.

Assault: unlawful attempt to strike another.

Assembly, right of: right to hold meetings.

Assessment: (a) beneficial associations: see page 145; (b) stock: see page 132; (c) public improvements: see pages 205, 234; taxation: see page 203.

Assignment: transfer of property or rights in property from one to another. The one who transfers is called the assignor. The other is the assignee.

Assignment for benefit of creditors: see page 85.

Assignment of dower: after you die, the court finds out what Amanda's dower right amounts to and allots it to her.

Assumption of risk: a doctrine by which an employee is held to take the chance of being injured in his work and, by going into it, to surrender his right to damages if he is injured.

Attachment: see page 80.

Attractive nuisance: anything on your land attractive to children and likely to harm them if they play near it. You should remove it or place a guard around it, and are liable if you don't and a child is injured. A turntable on railroad property is the classic example.

Auction: see page 136.

Aviation: see **Sky Laws**.

Avoiding a contract: refusing to be bound by it.

Bail: see page 103.

Bailment: see page 172. Bailor is the owner of the property. Bailee is the one who is keeping it for him.

Balancing the accounts: putting them into final form and determining from them who owes the other.

Ban: banish, prohibit.

Bankruptcy: see page 89.

Banns: what you and Amanda might have done if you had not eloped. It is the giving of a notice in church of an intended marriage, so others can object to the marriage if they want to.

Bar: a rail. Still used in court rooms, where it divides those who are lawyers from those who are not. Hence the term "Members of the Bar."

Bargain and sale: contract to sell land. It passes no title. The deed does that. But it gives the purchaser a right to the deed when he performs his part of the contract.

Belligerent: a state which wages war.

Beneficial associations: see page 145.

Beneficiary: the person to receive the money or income from a trust fund or under an insurance policy.

Bequeath: to give away personal property in your will. What you give is called a bequest or legacy. The one who is to receive it is the legatee. The words used when the property is real property are devise and devisee.

Best evidence: original documents are better than copies. The general rule is that the best evidence must be produced in court.

Betterments: improvements to property other than repairs.

Bilateral contract: where each party to the contract makes a promise to do something. If only one makes a promise and assumes a future obligation, it is called a unilateral contract.

Bill in equity: when you sue Smith in equity, you state the facts entitling you to relief in a pleading called a bill in equity.

Bill of exceptions: if your lawyer thinks that the court trying your case is mistaken on his law he objects and "saves an exception," which he must do in order to bring it to the higher court. Then if the case goes against you, he brings together all the exceptions he has saved into a statement which is called the "bill of exceptions," and it is on the basis of this statement that the court above reviews it.

Bill of lading: when you ship goods, the carrier gives you a receipt which is also a contract to carry them to destination. This is the bill of lading.

Bill of particulars: when suit is brought on a claim containing a number of different items, those items are set out in detail in a statement called a bill of particulars.

Bill of sale: written evidence of the sale of goods.

Bill to perpetuate testimony: if you want to preserve some one's testimony to use in a possible future suit, you secure it by bringing in court this bill.

Binding slip: see page 148.

Blue laws: the old Sunday laws in New England.

Blue sky law: law regulating investment companies, to protect the public against the fraudulent ones.

Bona fide purchaser for value: see page 166.

Bond: see page 155.

Bonded warehouse: when you import goods and postpone the payment of duties by giving bond, you put the goods in a bonded warehouse and pay your duties when you take them out.

Bottomry bond: a bond and mortgage on a ship given to secure payment of money loaned for the use of the ship.

Boundary: see page 48.

Breach of contract: see page 154.

Breach of promise: see page 26.

Breach of the peace: public disorder.

Breach of trust: a trustee's violation of the terms of the trust deed or agreement.

Brokers: see page 198.

Bucket shop: ostensibly a brokerage house but really a gambling resort where bets are made on the rise and fall of prices of stocks.

Building associations: see page 58.

Building contract: see page 63.

Building permit: see page 63.

Building restrictions: see page 44.

Burden of proof: he who asserts a fact must prove it. It works out this way. If you are suing some one else, you must prove your case. He does not have to disprove it. But if he admits what you say, but sets up other facts to excuse himself, those facts he must prove. See **Doubt**.

Burglary insurance: see page 149.

By-laws, church: see page 67; corporation: see page 131.

Cancellation of instruments: see page 159.

Canon law: church law, canons being the edicts of the pope.

Capias: order of court directing the sheriff to arrest you.

Capital stock: see page 131.

Capitalizing: computing the amount which, when put at interest, will produce a stated income.

Case system: studying law by studying cases and deducing principles from them.

Casualty: accident for which you are not responsible.

Cause of action: your reason for suing Smith, if there is reason in it.

Caveat: beware! (a) A warning to purchasers to be wary of the tradesman (caveat emptor); (b) also in patent law, a warning or notice to the world of your claim to a patent.

Certificate: a writing under oath vouching for the existence of a fact.

Certiorari: an order of a higher court directed to a lower court to send up a certified record of a case before it for the higher court's consideration.

Cestui que trust: the person for whose benefit a trust fund is established.

Chain of title: a list of those who owned your land before you did.

Chambers: referring to the action of a court when not in session.

Champerty: a lawyer's soliciting business by promoting lawsuits, paying expenses and taking fees out of what is recovered for clients.

Character evidence: when a neighbor vouches in court for your integrity. Perhaps he does not go quite that far. He may tell the court merely what your neighbors think of you.

Charge on land: a claim which you must pay before you have a clear title to your land.

Charities: see page 244.

Charter: church: see page 67; city: see page 233; corporation: see page 131.

Chattel: personal property as distinguished from land.

Chattel mortgage: see page 173.

Chose-in-action: a right to bring an action in court to recover a debt or damages.

Citation: a notice to come to court.

Citizenship rights: see page 221.

Civil action: an action by one individual against another. Criminal action is brought by the state.

Civil law: Roman law, in continental Europe and Louisiana, as distinguished from common law, in England and rest of this country (which see).

Civil rights: see page 216.

Class legislation: see page 218.

"Clean hands": when you come into an equity court asking the court to make Smith do something or stop doing something, you must be without fault yourself—you must come into an equity court with "clean hands." See **Equity**.

Cloud on title: see page 55.

Code: a system of law adopted by act of the legislature.

Codicil: a "postscript" to your will. You can add it at any time, but you must do it with the same formalities as in making the will.

Coercion: compelling another to act against his will in the way you want. The law regards it as your act, not his.

Collateral ancestors: uncles and aunts. Relatives on a side line.

Collateral facts: not the main facts in issue, but other facts brought forward to prove them.

Collateral security: not the main contract, but another obligation entered into to secure its performance.

"Collision" clause in automobile insurance: see page 146.

Collusion: an agreement to commit a fraud on another or on the court.

Color of title: not the real title to land but an apparent title

which you seem to have because of a deed or some other customary evidence of title.

Comity: one state consenting to give effect to the laws and acts of other states. The "Golden Rule" in interstate relations.

Commerce clause: giving Congress exclusive jurisdiction over commerce between states.

Commitment: order of court to confine a person in prison or in an asylum.

Commodities clause: legislation prohibiting a railroad to transport articles manufactured or mined by itself.

Common carrier: any agency furnishing transportation facilities to the public and charging for them.

Common law: rules and principles of law enunciated by the courts and controlling in the absence of statutes. You find what the common law is by reading court decisions; the statute law by examining the statutes.

Common law marriage: marriage without ceremony; agreeing to live together as husband and wife and then doing it.

Common scold: a person who, by scolding overmuch, becomes a public nuisance. The customary specific was a ducking.

Compact: agreement.

"Companionate" index: (a) what it does—reveals, by an arrangement of material, the close, intimate relationship between you and the subject indexed; (b) what it is—a life-long companion if your interest in it lasts that long; easily laid aside when that interest wanes.

Comparative negligence: a doctrine, followed in some states, allowing recovery for personal injuries to a plaintiff who was slightly negligent as against a defendant who was grossly negligent. The general rule is that any negligence on the part of the plaintiff, if it is a contributing cause of the injury, prevents his recovering. See **Contributory negligence**.

Compensatory damages: see page 110.

Competent witness: a witness legally qualified to testify.

Competent evidence: before you are permitted to give your evidence to a jury, you must show the court that it is relevant and competent, relevant meaning tending to prove a material point in your case; competent referring to the kind and quality of the evidence offered as, for example, that it must be the "best evidence" on the point, or that it must be something of which the witness has personal

knowledge—not something he has heard from somebody else.

Complaint: paper you file, telling the court what your troubles are and the relief you would like to have.

Composition with creditors: see page 86.

Compounding a felony: covering up a crime committed against you by agreeing not to prosecute the criminal if he will do what you tell him to do.

Conclusive evidence: evidence absolutely proving your point so that it cannot be contradicted.

Conclusive presumption: an inference that the law makes from certain facts and does not permit you or anybody else to contradict. That makes it a rule of law or, as it is called, a "presumption of law." A "presumption of fact" is an inference which the law makes but allows you to contradict if you can. Another name for this is "rebuttable presumption."

Concordat: an agreement between states or between the pope and a prince.

Condemnation of property: when the government takes your property, paying for it or not, depending on the purpose for which it is taken.

Condition of a bond: see page 155.

Condonation: when your wife forgives you if you promise not to do it again, she cannot afterwards change her mind and sue you for divorce unless you do it again. This applies equally, of course, to husbands who forgive their erring wives.

Confession and avoidance: When Smith sues you and files in court his complaint against you, you must answer it by denying what he says, or, if you admit it, by bringing to the court's attention some other facts which you think should excuse your doing what you did. This last form of answer is called "confession and avoidance."

Confidential communications: things that cannot be told in court where to tell them would be a breach of confidence. But the relationship must be one which the law for reasons of public policy protects in this way. The common illustration is communications between husband and wife.

Confiscation: taking or destruction by the state of property or property rights without compensation.

Conflict of laws: where the laws of two states differ on the issue being tried in court and the question arises which law controls. If it is a case involving land, the law of

the state where the land is controls (*lex situs*). A contract case is governed by the law of the state where the contract was made, or the state where it is to be performed, depending on whether the question is one of validity of the contract or one of its performance (*lex loci contractus*). If the question is whether the proper remedy is being pursued, then the law of the state where the action is brought controls (*lex fori*).

Confusion of goods: mixing of goods belonging to you and to someone else, so it is impossible to tell them apart.

Connivance: consenting to another doing some wrongful act. When you do that you cannot object to it afterwards. Mostly happens in divorce.

Consanguinity: blood relationship.

Consideration: inducement to the making of a contract or deed.

Consignment, consignor, consignee: When you send goods to another and a common carrier takes them to destination, you are the consignor, the person to whom you send them is the consignee, the contract with the carrier is the consignment.

Conspiracy: combining with others to do something which is itself criminal, or doing it by criminal means.

Constitution: organic law of a state, corporation or other organization.

Construction: contract: see page 153; deed: see page 46; will: see page 181.

Consummate: fully realized.

Consummation of a trade: negotiations ending in a contract.

Contempt: see page 121.

Contingency: an event which may or may not happen.

Contingent estate: an estate which may or may not be yours dependent on whether a stated event happens or not.

Contingent fee: your lawyer's fee to which he is entitled only if he wins your case.

Continuance: putting off the trial of your case to some later day when your lawyer can be on hand to try it, or witnesses be brought to court.

Contraband: articles a neutral nation cannot carry to a belligerent in time of war. Generally things needed to carry on the war.

Contract: see page 151.

Contract labor law: see page 223.

Contract of sale: see page 135.

Contribution: if a loss is suffered by you jointly with others, but you have been compelled to meet the whole of it yourself, you can compel the others to contribute their shares.

Contributory negligence: see page 111.

Contumacious conduct: resisting authority.

Conversion: (a) changing real estate into personalty or vice versa; (b) wrongfully assuming control of personal property that belongs to another.

Conveyance of property: transfer of property.

Coparceners: sisters inheriting an estate jointly so that each has title to the whole. Applies also to husbands of sisters.

Corporations: see page 131.

Corpus delicti: necessity of proving that a crime has been committed before going on to prove who did it.

Counterclaim: if you sue Smith and Smith also has a claim against you, the court balances one against the other and gives judgment for the excess to the one proving the larger claim. Smith's claim, Smith being the defendant, is called a counterclaim.

Coupons: promissory notes to pay interest, attached to bonds which are promissory notes to pay the principal.

Courses and distances in deed: describing boundaries by angles measured in degrees and lines measured in feet or rods.

Court-martial: military court for trial of military offenses.

"Covenant running with the land": see **Real covenant**.

Covenants: promises or warranties under seal.

Covenants of title: see page 46.

Covenants against encumbrances: see page 47.

Covenants of warranty: see page 47.

Coverture: a married woman's legal disability to do certain things or assume certain obligations.

Creditors' bill: when creditors cannot secure the debtor's property by execution, which is the remedy at law, they go into an equity court, file a creditors' bill and get it that way. See **Equity**.

Cropper: see page 203.

Crops: see page 201.

Cross-bill: if you sue Smith in equity, which you do when you want him to do something other than pay you money, Smith can also ask for relief against you which he does in the form of a cross-bill. See **Equity**.

Cross-examination: if you sue Smith and introduce the testi-

mony of witnesses to prove your case, Smith takes his turn at questioning them for a double purpose, either to prove facts in aid of his defense, or to make it apparent to the court and jury that what your witnesses have testified to is not at all to be relied on, either on account of bias or poor memory or something else which makes them poor witnesses.

Cruelty: meaning legal cruelty which is cruelty severe enough to endanger life or health.

Cumulative evidence: confirming other evidence.

Curtesy: see page 176.

Curtilage: yard round your house or a field near the house if used in connection with it.

Custody of the law: property taken into custody by the court to be given later to the person found to be entitled to it.

Custom: a practice having the force of law.

Cy pres doctrine in charities: see page 246.

Damages: see page 110

Damnum absque injuria: loss you suffer for which you can hold no one responsible.

Days of grace: three days allowed you under the law to pay your note after it becomes due.

Death, presumption of: see page 253.

Debenture: a corporate bond secured by whatever property the corporation may have from time to time, but not a charge upon any specific piece of property.

Declaration: your statement to the court of facts on which you base your right to recover in your suit against Smith.

Declaration of intention in naturalization law: see page 224.

Declaration of trust: a statement by which the owner of property makes it known that he is holding it for another's benefit. He declares himself to be a trustee of the property.

Declarations, evidence: see **Dying declarations**; also, **Self-serving declarations**.

Declaring dutiable imports: furnishing a statement to the government of the things you are bringing into the country on which duties are payable.

Decree of court: order of court.

Decree nisi: order of court to become fully operative at a future date "unless" something happens meantime to stop

it. If nothing does happen, it becomes a "decree absolute" at the stated time. Used in divorce.

Dedicated to homestead purposes: setting aside for yourself that part of your home property which you intend to claim as exempt from liability for your debts.

Dedication: see page 247.

Deductions, income tax: see page 210.

Deed of gift: instrument conveying the property you wish to give to another.

De facto and de jure: actual existence and lawful existence. A corporation functioning as a corporation, but because of some irregularity in organization not a lawful corporation, is a corporation de facto. When it complies with the law fully, it is a corporation de jure.

Defamation: a slander.

Default: your failure to do what you are under legal obligation to do, or must do to protect your rights.

Defeasance: something in the form of a condition or deed which defeats an existing estate. If it is in the deed creating an estate, it is called a condition; if it is in the form of another deed, it is called a defeasance.

Defendant: Smith is the defendant when you are suing him.

Defenses: facts Smith sets up as grounds for defeating your action against him.

Del credere factor: see page 203.

Delegated powers: (a) grant of authority to act for stated purposes; (b) grant of powers by the states to the federal government.

Delinquent: doing something the law says you ought not to have done, or leaving undone something you ought to have done.

Demonstrative legacy: when you make a gift of money in your will and specify the fund out of which it is to be paid.

Demurrage: the railroad gives you so much time to take freight consigned to you out of its cars, and then charges you demurrage for your delay beyond that time in doing it.

Demurrer: when you sue Smith and state your cause of action against him, you must state a good cause of action, of course. If Smith does not think you have, he "demurs," or files a demurrer, and the court determines whether you have or not. But Smith may answer your statement with one of his own containing a "confession

and avoidance" (which see). If you do not think what he has said is a good defense, you "demur" to his answer, and the court decides. After all demurrers are out of the way and pleadings have been found to be sufficient, you all settle down to business and go ahead with the trial on the merits.

De novo: anew. A second trial.

Deodand: if you run over a child and kill him, your automobile is taken away from you and "given to God." This law applies to anything at all which is the cause of death. Not the rule now, but it was in England as late as 1846. Suggested to our lawmakers as a way out.

Dependent: one whom the law requires you to support.

Deportation: sending an alien back to the "old home" when for some reason he is not entitled to stay here.

Deposit, general and special: see page 167.

Depositary: one who receives deposits of money and goods and holds them for the owner.

Depositions: see page 119.

Depreciation: decrease in value of real and personal property from wear and tear.

Derogatory clause: a device employed to guard against spurious wills. A secret mark which you adopt and use in all your wills stating in your will that none is genuine without it. No one else knows what it is until you die and your will is offered for probate.

Descent, rules of: see page 177.

Detention: holding on to property or a person and not letting go.

Detinue: when Smith holds on to your property and refuses to let go, your remedy against him is "detinue." His reason for doing it may be that someone else is claiming the property and he does not know to whom to give it. The "someone else" is brought into the case, and "interpleads"—that is, sets forth his claim—and the court decides between you who is entitled, and then Smith hands it over.

Devastavit: mismanagement of trust property by a trustee or executor or administrator with resulting loss to the beneficiary. A shorter word for it is "waste."

Deviation from contract: doing something different or in a different way than the thing or way your contract provides for.

Deviation in insurance: doing something your insurance policy

says you shall not do, thereby increasing the company's risk and relieving it of further liability.

Devisavit vel non: has he devised or not? The issue raised is the validity of a will offered for probate.

Devise: a gift of land by will. The one who receives it is a devisee.

Dictum: the actual point decided by the court in a case is the decision. Anything else in the opinion not essential to the decision is dictum.

Dies non: days the judge does not work—judicially. Not a court day.

Dilatory plea: holding up the case on some technical point. "Putting off the evil day."

Direct tax: a tax levied directly upon the person who pays it. When levied on goods and paid by the purchaser as part of the purchase price, the tax is indirect.

Disability: legal incapacity of infants, lunatics and wives (formerly) to bind themselves by contract or to convey away their property. But if you are a wife see page 6.

Disaffirmance: when one who under the law can refuse to be bound by another's act or by his own act does so.

Discharge from liability: relieving from further liability.

Discontinuance: your failure to carry your case against Smith through the court to judgment after you have started it.

Discounting a note: see page 169.

Discovery of facts: compelling Smith to disclose facts material to your case which he knows about and you do not.

Discrimination in rates: failure to give equal treatment in rates to those entitled to it.

Dismissing a case: ending your suit but not your cause of action. You can start another suit on the same ground when you want to.

Dispossession: wrongfully putting you out of possession of your property.

Disseisin: wrongfully depriving you of your estate in property, of both your title and possession. Seisin is possession plus title.

Distrain or distress: taking possession of your tenant's goods and holding them until he pays his rent.

Distributive share: see page 177.

Diversion: changing the course of a stream to the injury of an owner farther down.

Dividends: profits set apart by directors for distribution to stockholders.

Documents of title: paper evidences of your title.

Documentary evidence: written instruments offered as proof of facts.

Domicile: see page 66.

Dominant estate: see **Easement**.

Donor and donee: the donor gives, the donee receives the gift.

Double insurance: if you insure in one company for more than your interest is worth, it is called over-insurance. If you split it up among different companies, it is double insurance. It must be for the same interest. If it is for different interests in the same goods, mortgagor and mortgagee for instance, it is not double insurance.

Doubt: a way of measuring proof. In criminal cases, if there is a reasonable doubt in any juryman's mind as to guilt, the prisoner goes free. In a civil case, it depends on whose story is the more doubtful, yours or Smith's, or, from another angle, the more convincing. The important word is "more" not "convincing." In fact, "convincing" is not a good word at all to use in this connection, because conviction is not required in civil cases. If the jury thinks your evidence "preponderates," you are entitled to a verdict. If it does not, Smith is entitled.

Dower: see pages 30, 176.

Draft: (a) for military service; (b) your order upon another to pay money to the holder of your order.

Drago doctrine: against the forcible collection of debts from South American debtors by nations representing the creditors. Drago was minister of foreign affairs of the Argentine Republic, and he expounded the doctrine, later known as the Drago doctrine, in a letter to the Argentine Minister at Washington, December 29, 1902. Compare date with that of President Roosevelt's message to Congress on the Monroe Doctrine (which see).

"Drawbacks" in customs: see page 208.

Drawee: the person to whom you address your order to pay money to the third person you name. When he says he will do it by writing his name on the order, he is known as the acceptor.

Dry trust: when the trustee takes title merely to convey it to the beneficiary. No management involved. Sometimes called a naked trust.

Due care: the care required of you by law. Reasonable care under the circumstances is the rule.

Due process of law: refers to the taking of your property from you. It cannot be done except in the way provided by law.

Duress: subjecting a person to fear of personal violence in order to make him do what you want.

Dying declarations: statements made by you on your death bed when you know you are dying are later admissible in court through the testimony of any witness who heard you make them. This is an exception to the general rule that statements must be made in court under oath by the person himself.

Dying without issue: means dying without living issue, living when you die. A phrase used in wills in directing to whom your gift is to go.

Earnest money: payment of money to bind the bargain.

Easement: right of the owner of a neighboring piece of land, because of his ownership, to the enjoyment of certain privileges on, over or through your land, e. g. a right to pass over it or to have water pipes go through it. The owner of the easement has what is called the "dominant estate," a right over yours. Yours is the "servient estate," subject to his rights.

Ejectment: ousting you from the possession of land to which you are not entitled.

Election: choice of one of several available remedies or courses of action.

Elections: see page 237.

Electoral college: the body of electors chosen by the people to elect the President.

Eleemosynary corporations: charitable corporations.

Emancipation: releasing control over another, as, for example, by a parent over his infant child.

Embargo: prohibiting the departure of ships or the exportation of goods.

Embezzlement: misappropriation of trust funds by a trustee.

Emblements: crops.

Embracery: an attempt to corrupt or influence a jury.

Eminent domain: see page 194.

Emoluments: profits from holding a particular office.

Enabling statute: a statute permitting what was before prohibited.

Encroachment: building on or over another's land or placing

- anything on it to remain there when you have no right to do so.
- Encumbrance:** a lien or charge or any right which another has in your land, the land being always subject to it even after a sale.
- Enjoin:** an order of an equity court, prohibiting your doing some wrongful act.
- Enlistment:** a contract to enter the military service of the country for a particular term.
- Entail:** an estate limited to the "heirs of your body," not to all your heirs as in the case of a fee simple.
- Enticing:** wrongfully persuading.
- Entirety:** an estate in the whole of a piece of property. *Moiety* is an estate in half of it.
- Entity:** a thing actually existing.
- Entry:** (a) going on land to take possession; (b) going on public land to claim a homestead; (c) declaring imported goods subject to duty; (d) breaking into a house to steal.
- Enumerated government powers:** see page 212.
- Equal protection of the laws:** constitutional guarantee against unjust discrimination.
- Equitable estate:** a beneficial interest in land, the legal title to which is in some one else.
- Equitable mortgage:** what appears to be an absolute conveyance of the fee may be shown to be merely a mortgage, the agreement between the parties being that the one taking the deed will give the property back when the mortgage debt is paid.
- Equity:** generally speaking, the only remedy open to you in a court of law is the recovery of damages. If this is inadequate and you are entitled to a decree ordering Smith to do something other than pay money, or to refrain from doing something, you go into a court of equity. There are other grounds for going into equity, but this is the main one and serves best to mark the essential distinction between law and equity.
- Equity of redemption:** see page 61.
- Escheat:** the passing of title in land to the state where no disposition has been made of it by the owner and when at his death there are no heirs to take it.
- Escrow:** placing a deed with a bank or other depository to be delivered to the person taking the land upon the performance of certain conditions—generally the payment of money.

Esquire: a title anyone can assume. Appropriate to lawyers. Nothing much in the way of distinction.

Estate: see page 174.

Estoppel: conduct of yours which "stops" you later making a claim inconsistent therewith.

Estray: stray cattle.

Ethics, legal: a moral code for lawyers to follow in their practice.

Eugenics: necessity of proof of physical fitness to marry before you can marry.

Eviction: when you lose possession of land by some one, who has a better title, taking it over.

Evidence: proof or disproof of facts in court.

Ex contractu and ex delicto: actions are classed as "ex contractu" and "ex delicto," according as they are founded on breach of contract or tort.

Ex parte: something done in or with reference to court proceedings when only one of the parties is present. Of course the absent party is entitled to his day in court, but the ex parte proceedings serve to preserve the parties' rights as they are until a full hearing can be had.

Ex post facto laws: see page 218.

Exception: a clause in a deed preventing some property or property right passing under it, which otherwise would.

Exchange of property: see page 197.

Exchequer: the English equivalent for our Treasury Department.

Excise: internal revenue tax upon consumption.

Exclusion of alien: keeping him out of the country in the first place. Deportation is ordering him home after he is in.

Exclusive franchise: grant by the state or city of a privilege, one of the express terms of the grant being that no similar privilege will be granted to anyone else.

Executed consideration and executed contract: a consideration or contract performed.

Execution: see page 81.

Execution of writing: signing it and making it operative.

Execution of will: signing with the required formalities.

Executor: see page 182.

Executor de son tort: one acting as executor, but without lawful authority to do so.

Executory consideration or contract: a consideration or contract not yet performed.

Executory devise: when you give by your will an estate in land to take effect upon the happening of some future contingency. The devisee has no estate when you die. He does not have it until the contingency happens.

Executory interests in personalty: see page 175.

Exemplary damages: see page 110.

Exempt from operation of law: not subject to it.

Exemptions: see page 88.

Exequator: permit authorizing a foreign counsel to open his office and do business.

Exoneration: if you mortgage your property and then die, your executor pays the debt out of your personal estate if he can. This "exonerates" the mortgaged real estate from liability for payment of the debt.

Expatriation: renouncing citizenship and becoming a citizen in some other country.

Expectancy: an estate you expect to have sometime.

Experts: witnesses, qualified as having special knowledge along some particular line, who give their opinions in court for what they are worth in answer to hypothetical questions framed to fit the facts presumed to have been established in the case.

Express and implied contracts: an obligation you meant to assume and said so is **express**. Other obligations necessarily involved in the express obligation but which you did not bother to put into words are **implied in fact**. If you did not give a thought one way or the other to assuming the obligation, but did conduct yourself in a way to give the other reasonable ground for believing that you had assumed it, the obligation is **implied by law**.

Expulsion of alien: see **Deportation**.

Extenuating circumstances: reasons why the verdict or sentence against you should be less severe than otherwise it might be.

Extras in building contract: things put into the house in building it which the contract did not call for and for which you must pay an additional sum.

Extraterritoriality: see page 219.

Extortion: when a public officer compels you to pay for a public service more than the law allows or before it becomes due under the law.

Extradition: one state or nation surrendering to another a person charged with crime. Done under treaty or by comity.

Factors: see page 203.

Failure of consideration: if the consideration you give for another's promise is "executory," that is, something still to be done, and you do not do it, there is a failure of consideration. Whether it prevents your holding the other to his promise depends on the terms of the contract. If his promise is conditioned on your performance, then, of course you cannot hold him.

Failure of title: when the title you have purchased turns out to be bad.

False imprisonment: see page 104.

False personation: pretending to be someone you are not.

False pretence: misrepresentation made with intent to obtain money or goods.

False return: a sheriff who is given a notice or other paper to serve upon a person must do so and then write a statement of what he has done on the back of the copy he retains and return it into court. A false return is a false statement by the sheriff.

Federal question: a question arising under the United States Constitution or laws, giving the federal courts jurisdiction of a case.

Fee simple: see page 175.

Fellow-servants: a doctrine which prohibits a recovery of damages for personal injuries by an employee if the negligent act which caused them was the act of another workman in the same employment.

Felony: a crime of higher grade than misdemeanor. The line between them is not clearly defined. See **Misdemeanor**.

Feme covert and feme sole: married woman and spinster respectively.

Fidelity insurance: see page 142.

Fiduciary: one holding a position of trust or confidence.

Fieri facias, nicknamed "fi. fa.": the writ of execution directing the sheriff to "cause to be made" out of your goods a sufficient sum to pay your creditor the amount of his judgment.

Finding: a decision by court or jury as to what the facts in a case are.

"First papers" in naturalization: see page 224.

Fixtures: personalty affixed to the land or to a building.

Floating capital: capital not put into improvements but kept out for the purpose of meeting current expenditures.

- Floating debt:** corporate debts for the payment of which no money has been appropriated and no provision made.
- Forbearance:** postponing the enforcement of your claim against Smith, or Smith's postponing the enforcement of his claim against you.
- Forced sale:** when you sell your property because you are forced to, or where it is sold for you under the law.
- Foreclosure:** see page 61.
- Foreign attachment:** attaching property in the state belonging to someone out of the state.
- Foreign corporation:** corporation organized and whose home office is in another state.
- Foreign divorce:** divorce secured in another state or country.
- Foreign judgment:** judgment secured in a court in another state or country.
- Foreign jurisdiction:** another state or country.
- Foreign law:** the law of another state or country.
- Foreshore:** land between high and low water mark.
- Forfeiture:** loss of your property or property rights resulting from your acts.
- Forfeiture of a bond:** failure to perform the condition and paying the penalty named in the bond.
- Forfeiture of lease:** loss of lease on grounds provided for in the lease.
- Forgery:** falsely making or changing a writing with intent to defraud.
- Forthcoming bond:** bond given the sheriff in which you promise under penalty that your property will be "forthcoming" when he wants it.
- Franchise:** privilege granted by state or city to an individual or corporation to do things which it could not do without it.
- Fraud:** see page 114.
- Frauds, Statute of:** see page 152, 157.
- Fraudulent conveyance:** see page 82.
- Free list:** see page 207.
- Free on board:** contract for sale of goods calling for their delivery without delivery charges on vessel or railroad car, the consignee paying all other transportation charges.
- French spoliation claims:** claims against the United States, not France. Originally against France for illegal taking of property on the high seas. A treaty between France and the United States was made in which the United States abandoned these claims. Then the claimants sought to

recover against the United States, and the United States authorized their payment.

Frivolous plea: a plea that really does not go to the merits of the case.

Fructus industriales and fructus naturales: crops and natural growths, respectively.

Fugitive from justice: one fleeing from the jurisdiction of the state where the crime was committed to escape arrest.

Functus officio: no longer having authority.

Funding system: borrowing by issue of bonds and paying back into a sinking fund something each year towards the payment of the principal when it becomes due, the payments into the fund being adequate also to take care of interest payments meanwhile.

Garnishment: see page 80.

General agent: one to whom you have given a general authority to manage your business.

General assignment: assignment for benefit of creditors; see page 85.

General average: extraordinary losses incurred on a voyage, shared by the ship owner and the owner of the cargo under a "general average" clause in the bill of lading.

General deposit: see page 167.

General elections: state or federal elections as distinguished from the local elections of local officials.

General issue: see **Special issue**.

General and special laws: general statutes have general application to all in a stated class. Special, to particular individuals, cities or organizations named.

Gifts: see page 246.

Gifts causa mortis: see page 247.

Good will: see page 133.

"Goods" and "goods and chattels": "goods" means merchandise. "Chattels" covers goods but adds to it fixtures, animals, choses-in-action (which see) and leases.

Grand jury: the body that considers only the district attorney's case against the accused to determine whether it is sufficient to warrant a trial. If they decide that it is, "true bill" is indorsed on the bill of indictment. Otherwise it is indorsed "no bill."

Grandfather clause: if your grandfather fought in the Civil War, you and your descendants are exempt from a clause

in the constitution of some Southern states restricting the right to vote to those who can read and write and work and pay taxes.

Grant, grantor, grantee: transfer of land. The grantor makes the grant. The grantee takes the land.

Gretna Green: a place in Scotland where in former days you could have been legally married by simply saying so in the presence of witnesses. Only Gretna Greenites can do it now.

Gross negligence: very great and very culpable negligence.

Ground rent: see page 196.

Group insurance: see page 150.

Guaranty: promise to make good another's liability if he does not.

Guardianship: see page 186.

Guardian ad litem: one appointed by the court to represent an infant in court proceedings, and only for that purpose.

Habeas corpus: see page 105.

Hague Tribunal: a permanent international court of arbitration.

Head of a family: see page 29.

Hearsay evidence: testimony of a witness as to what somebody else told him. It is not admissible, as a general rule.

Heirs: those entitled to your real property after you die if you do not make a will; see page 178.

Herediments: land and some things that go to your heir and not to your administrator, if you die without making a will.

Heresy: denial of church doctrines which authorities in the church see fit to make a test of fitness for membership in the church.

High seas: the minute you wade in below low water mark, you are on the high seas. Low water mark east from Maine to Florida or west from Alaska to California.

Holder for value: see page 166.

Holding company: see page 243.

Holding over: occupation by a tenant after termination of his lease.

Home port: where the owner of the ship lives.

Homestead: see pages 30, 87.

Hostile claimant: when another claims title to your land.

Hostile witness: a witness who goes on the stand for you and turns against you. When he does that, you can cross-

examine him. Ordinarily you cannot cross-examine your own witness.

Hotchpot: after you die, your administrator brings into a common fund all your personal property he can find. He counts in as part of it the advancement you may have made to any of your children (see **Advancement**). Then he takes the total and divides it among those entitled. In this way, a child who has had part of his share advanced to him gets his share and no more.

Householder: one who keeps house with his family and for that reason is entitled to hold certain property exempt from his debts.

Hypothetical questions. See **Experts**.

I. O. U.: an acknowledgment of a debt, but there is no promise to pay in it.

Immigration laws: see page 222.

Immunity from arrest: exemption or freedom from arrest.

Impairing obligation of contract: see page 217.

Impeachment of waste: charging one who has an estate in land less than the fee, with wasting it.

Impediments: disabilities such as infancy and insanity.

Implied powers of government: see page 213.

Imported in bond: giving a bond that you will pay the duties when you take the goods.

Improvements: see pages 40, 193.

Imputed negligence: a doctrine which makes somebody else's contributory negligence your own, preventing you from recovering damages for personal injuries. Usually it is a child who suffers in this way for its parent's negligence in letting it out on the streets alone, or a guest in an automobile who has to take the blame for the driver's negligence. Not every guest is in this predicament. It must be shown that he and the driver were engaged in some joint enterprise at the time, so that the act of one is the act of both.

Inadequate consideration: a consideration much less than the value of the service or thing bargained for. It is none the less a legal consideration sufficient to support the contract, but, with other circumstances, may show that the transaction was fraudulent.

Income: yearly profit from the use of invested capital.

Indebitatus assumpsit: being indebted, he promised. It is the

remedy followed to recover on oral contracts, express or implied. See **Express and implied contracts**.

Indefeasible title: a title which cannot be defeated.

Indemnity, indemnify: see page 137.

Independent contractor: one who contracts to furnish you a certain result of his work, but he does it his own way and is not subject to your control while he is doing it.

Independent promises: a contract so made that each is liable on his promise regardless of whether the other performs or not.

Indeterminate sentence: a sentence for a minimum and maximum term, making the prisoner eligible for parole at the end of the minimum term.

Indictment: formal criminal charge against the accused.

Indirect evidence: evidence from which you can infer another fact you wish to prove.

Indorsement: writing your name across the back of a note subjecting yourself to liability to pay it if others do not.

Inevitable accident: one you are not responsible for and cannot hold others responsible for.

Infant: see page 19.

Information: it functions as an indictment, only instead of being the accusation of a grand jury, it is the accusation of a public officer. In both cases, it brings the accused to trial. Used in *quo warranto* (which see).

Infringement: violation of a patent right or copyright.

Inherent power or right: a right or power one has himself without going for it to somebody else.

Inheritance: the estate you receive from your ancestor if he dies without making a will.

Initiative, referendum and recall: the right of the people to act directly in initiating and voting on legislation, and in retiring public officers from office.

Injunction: a decree of an equity court ordering Smith not to do to you or your property what he is threatening to do, or if he is doing it to stop it.

Injuria absque damno: doing something wrong, but not damaging anyone by doing it. See **Damnum absque injuria**.

Injury: the violation of a right—in other words, a tort or wrong. Also the damage resulting from it.

Innuendo: the explanatory clauses in your declaration against Smith for slander telling the court why what he said about you was so bad. Reading between the lines. *You* see it and feel it, but the court, without your help, does not.

Inquest: an inquiry to be made by a body of men appointed by the court for the purpose.

Insolvency: inability to pay your bills *when due*. You may have sufficient property to pay them a good many times over. If you haven't a cash balance sufficient for the purpose and cannot raise it in time to pay when due, you are insolvent.

Inspection, customs: see page 208.

Instructions by court: (a) directing executor or trustee what a clause in a will means; (b) telling the jury what the law governing the case is.

Instrument: legal document.

Insurable interest: a pecuniary interest in the thing insured. You must have the interest before you can insure it.

Insurance: a contract to pay you a definite sum of money or the amount of the loss you suffer on the happening of a contingency named in the policy.

Inter vivos gift: gift between the living. That is what most gifts are.

Interest: (a) money paid for the use of money; (b) a right to property or a right in it.

Interlocutory judgment: during the progress of your suit against Smith through the court, the court at your request orders Smith around on this and that. These incidental orders before final judgment is rendered are interlocutory. Final judgment puts an end to it.

International law: law governing the relations between nations. None the less law because there is no super-sovereignty to enforce it.

Interpleader: see **Detinue**.

Interpretation: see **Construction**.

Interrogatories: written questions directed to witnesses to answer in advance of trial.

Intervention, International Law: see page 102.

Intestate: dying without leaving a will.

Invalidate: to make ineffectual.

Inveiglement: enticement.

Irrelevant evidence: having nothing to do with the case. No tendency to prove or disprove it.

Irreparable injury: damage that cannot be repaired. When Smith threatens that, it is time to go to court for an injunction against him, and it is to prevent that that the court issues its decree against him.

Irrevocable: a right granted that cannot be taken back.

Issue: (a) offspring; (b) bone of contention as disclosed by the pleadings.

Jeopardy: the risk of being convicted which the accused runs after indictment. When the trial is over, and the jury have agreed on a verdict, that is the end of it. He can never be tried again for the same offense. If convicted in a trial later found to be bad for some reason, he is entitled to another. But a good trial and agreement on a verdict one way or the other stops it for good.

Jettison: cargo thrown overboard to save the ship in a storm. If it floats, it's flotsam; if it sinks, it's jettison. The loss falls on the owners of the vessel and of the cargo saved. See **General average**.

Joint and several: referring to the nature of the liability of several on an obligation, where either of them can be sued separately for the whole or all can be sued together.

Joint adventure: see page 130.

Joint stock company: see page 132.

Joint-tenancy: see page 191.

Joint tort-feasors: several wrong-doers all liable together or individually for the same wrongful act.

Judgment: see page 81.

Judgment creditor: a creditor who has a judgment against you.

Judgment debt: a debt or claim based on a judgment that has previously been obtained.

Judgment in personam: judgment against defendant personally.

Judgment in rem: judgment against the land and enforceable specifically against it.

Judgment note: a promissory note with a clause in it "confessing judgment"—that is, allowing the holder, if it is not paid, to secure judgment on it at once without the delay of a trial.

Judicial notice: when the court takes notice that certain well known facts exist and you do not have to prove them. You do not have to call experts to prove to the court that the earth is round.

Judicial sale: a sale of your property under order of the court.

Jurat: written statement by the notary that you made oath before him that certain facts were true.

Jurisdiction: see page 120.

Jury: sometimes called the petit jury—the little jury of twelve who pass upon the facts of your case and whether you or

Smith are telling the truth, and who decide it after the court has told them what the law is.

Jus disponendi: your right to sell a piece of property provided it is yours, or to give it away, or to dispose of it by will.

Justiciable question: proper for a court to decide. Questions having to do with keeping up your dignity and touching your honor and interfering with the way you and Amanda are running the house are not justiciable—to your way of thinking. This applies to nations as well as to you and Amanda.

Justification: not all the excuses you give for your conduct are good. Some are. If the court thinks they are good in law you are excused, justified, made right.

Kidnaping: see page 104.

Labels: see pages 76, 200.

Laches: if you wait an unreasonable length of time before starting in to enforce your right, and during that time the situation so changes that enforcement now would work great injustice, the doctrine of laches applies, and the court refuses to give you the decree against Smith you ask for. This may happen even though your claim against Smith is not yet outlawed by the Statute of Limitations. In fact, laches has nothing to do with the Statute of Limitations. See **Statute of Limitations**.

Landmark: anything used to mark a boundary.

Lapse of a period: the end of it.

Lapsed devise: a devise of land which does not take effect because your devisee, to whom you make your devise, dies before you do.

Lapsed legacy: the same thing, only it is money instead of land. A lapsed legacy "falls" into your estate and goes to the one who takes that, unless in the will you dispose of it differently.

Latent ambiguity: words in an instrument having a double meaning. If the ambiguity is obvious on the face of the instrument, it is "patent." If it takes outside evidence to disclose it, it is "latent."

Latent defect: hidden defect.

Lateral support: your right to have your land and the building you own on your boundary supported by your neigh-

bor Smith's land. If he digs it away and your land caves in and your building falls down, he is liable for the damage.

Law and equity: when you want Smith to pay you money, you go to law; when you want him to do something or to stop doing it, you go to equity. See **Equity**.

Law of the case: when an appellate court has said what the law is on a particular point in a particular case, that is the last word on that point in that case. That particular point cannot be opened up again on a subsequent appeal.

Leading case: a case referred to by the courts everywhere again and again as a case of great authority on the point decided. It is a case of "follow the leader" after that—that is for those who do follow.

Leading question: framing a question for your witness to answer in such a way that he knows right away what you want him to say. Putting answers in his mouth. Not allowed when Smith objects.

Legacy: gift of money by will.

Legal tender: money you can compel Smith to take in payment of his claim against you.

Letters of administration: see page 182.

Letters rogatory: a letter from a judge in your state to a judge in another state asking him if he won't, *please*, summon a particular witness into court and take his answers to the questions being sent him and then to send them back, *please*.

Levy: (a) raising money by a tax; (b) taking your property from you by execution to pay a bill; (c) in war, starting the fight.

Lex fori and lex loci: see **Conflict of laws**.

Liability insurance: see page 147.

Libel: see page 115.

Lien: your interest in Smith's land when the law makes it security for your claim against him. He can never rid his land of it until he pays his bill. It becomes really effective when you start to have his land sold to pay it, or when he wants to sell his land and discovers that the purchaser won't take it until he has paid that bill.

Life estate: see page 175.

Life, presumption: see page 252.

Limitation of actions: see page 161.

Limited liability: (a) liability of stockholders of a corporation for debts of the corporation; (b) liability of railroad for loss of baggage or goods.

- Limited partnership:** under statute in some states, a partnership can take in special partners whose liability for partnership debts is limited to the amount contributed. The general partners still remain liable individually for all the partnership debts.
- Liquidated account:** account balanced or adjusted by agreement of the parties.
- Liquidated damages:** see page 110.
- Liquidated demand:** a demand for an amount agreed to by the parties.
- Liquidation, customs:** determining the amount due from the importer.
- Lis pendens:** an action in court not yet finished.
- Literary property:** your property right in what you have written. Not depending on copyright.
- Litigation:** your fight with Smith in court.
- Livery of seisin:** see **Seisin**.
- Local prejudice:** a ground for removing the case of *Self vs. Smith* to some other locality where the feeling over it doesn't run so high.
- Locus penitentiæ:** the negotiating period during which you can withdraw from the contract proposed. It lasts up to the moment when an offer is unconditionally accepted.
- Lost instrument:** see page 160.
- Lucid interval:** periods during which a person at other times insane understands what he is doing and can perform acts legally binding upon him.
- Magna Charta:** a grant of certain rights to the barons in England limiting the arbitrary power of the king *as against them*. Not a grant of rights directly to the people, as popularly understood. But it was the beginning of freedom from arbitrary rule of the Crown, and so is regarded as the Great Charter of English liberties.
- Maintenance:** support of members of your family or of others dependent on you and whom you are bound to support under the law.
- Mala prohibita and mala in se:** things prohibited by statute and things that are legally bad in themselves. Both are unlawful.
- Malice:** intentionally doing a wrongful act.
- Malicious mischief:** wantonly injuring a person or his property.
- Malicious prosecution:** prosecuting a person in a criminal or

civil action without probable cause, that is without any good reason for doing it.

Mandamus: a writ or order issuing out of a court of law commanding the defendant to do something. Generally this is what a court of law does not do and a court of equity alone does do. But it is generally issued only against public officers to secure the performance of some ministerial duty. In other words a court of law has authority to compel governmental agencies to function as under law they are bound to do.

Mandatory injunction: an injunction primarily enjoins or prohibits the doing of an act. But equity likewise has power to command the doing of an act. When the decree takes this form it is called mandatory.

Mandatory statute: a statute commanding a thing to be done, as distinguished from a "directory statute" which merely permits or authorizes a thing to be done. The practical difference is that an act in violation of a mandatory statute is void, while an act not conforming to the method prescribed in a directory statute is not.

Manifest: a ship's statement containing a list of the cargo.

Manslaughter: a wilful killing without malice aforethought on the part of the killer.

Maritime law: law governing ships, crew, passengers and cargoes. Also called admiralty law.

Market value: price current in the market for similar articles or property.

Marketable title: a title a reasonable purchaser knowing the facts will not object to.

Marriage settlement: see page 30.

Marshalling assets: making your property pay off the greatest number of your creditors. This is done by compelling a creditor who has a number of securities for the payment of his claim to exhaust first the security upon which other creditors have no claim.

Martial law: military authority substituted for civil in time of emergency and military necessity.

Master and servant: see page 140.

Master-in-chancery: to conserve the time of the equity court, cases requiring much detailed investigation are sent out to a lawyer commissioned to hear the evidence and report his findings to the court. He is called a master-in-chancery.

Materialmen: tradesmen furnishing material going into the

construction of a house. They are entitled to a lien on the building to secure payment.

Maturity: when an obligation to pay becomes due.

Mayhem: cutting off from a man any part of him that takes away his courage or ability to fight. Hands and eyes are useful for fighting. Ears and noses are not so important. If a man's front tooth is taken from him, his courage is gone. If you want to escape an indictment for mayhem, better leave Smith's front tooth in.

Measure of damages: the rule by which damages are measured.

Mediation: two fighting nations may find it difficult to keep up their fighting spirit if they talk with each other about peace, while either would be more than ready to talk it over with an outsider. An outsider's offer of his services to bring the two together is thus recognized as a part of the regular technique of the fighting business.

Memorandum: an informal writing serving as a record of facts. It is the important thing in the Statute of Frauds; see page 158.

Mental suffering: The anguish Sue tells the court she suffered when you gave her up for Amanda. As an element in damages; see page 110; in Sue's case, see page 27.

Mercantile agency: see page 198.

Merger: absorption of one thing by another. In estates, where a life estate is bought up by the owner of the fee. In corporations, where one takes over another. In liens, too. Also in contracts where an oral contract is supplanted by a written contract. And in marriage under the common law rule, you and Amanda are one and you are that one.

Mesne profits: When Smith has had possession of your property wrongfully for some time and you have been to court and taken it back from him. The court not only told him to give it back but to pay you all the profits he made out of the land while he was in wrongful possession of it. These are the mesne profits.

Message: the home acre, dwelling house, garage, chicken house, dog kennel, the orchard, vegetable garden—everything that goes with the place.

Metes and bounds: boundary lines.

Military law: army regulations: they seem to be the essentials to army discipline.

Military necessity: put forward as justification for acts in time of war which would lead to jail in time of peace.

Militia: see page 228.

Ministerial: work given you to do in the way you are directed or ordered to do it, calling for no judgment or discretion of your own.

Ministerial office: doing routine work as the law or a superior tells you to do it.

Miscegenation: marrying between different races.

Misdemeanors: lesser offenses which have no particular names as felonies have.

Misrepresentation: false statement. Must also be fraudulent to make one liable in damages.

Misuser: using a franchise in an unauthorized way.

Mitigating damages: circumstances justifying a reduction of damages.

Modification of instruments: see **Reformation**.

Moiety: an estate in half of a piece of property. See **Entirety**.

Money counts: remedies for recovering on implied obligations; money had and received, money loaned, money paid; see page 79. See **Express and implied contracts**.

Monopoly: see page 241.

Monroe Doctrine: a declaration to European powers contained in President Monroe's message to Congress, December 2, 1823, to the effect that "the American continents . . . are henceforth not to be considered as subjects for future colonization by any European powers" and that "we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States." Eighty years later President Roosevelt declared in a message to Congress, December 3, 1903, "We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power."

Moral obligation: what conscience tells you you should do, but the law does not compel you to do.

Moral turpitude: this however refers to legal "moral turpitude" and not to moral "moral turpitude"; see page 222.

Moratorium: when times are bad enough to threaten general business stability, a statute may be passed suspending the remedies of creditors against their debtors until the storm passes over.

Mortgage, mortgagor, mortgagee: see page 59. Mortgagor makes the mortgage; mortgagee loans the money.

- Mortmain:** land held by religious and charitable corporations is in a "dead hand" so far as any contribution to the public treasury is concerned. Therefore statutes, called Statutes of Mortmain, have been passed restricting the right of such corporations to hold land and the right of persons to give land to them.
- Most-favored-nation clause:** this clause in a treaty secures treatment in either nation of the other equal to the treatment accorded to the most favored nation. It does not prevent concessions sold for a price, but the price must be really adequate, a real business transaction on a business basis, and not merely an evasion of this treaty clause.
- Motions:** applications for court orders in the progress of a case in court.
- Municipal corporations:** cities principally, but the term is broader and includes all forms of governmental agencies which are incorporated by the state to administer the affairs of a particular locality for the state. They are incorporated agents of the state to do the state's work. Some, however, have a measure of home rule.
- Municipal law:** (a) the law of a particular nation as distinguished from international law; (a) law relating to cities and other municipal corporations.
- Murder:** killing with malice aforethought.
- Mutatis mutandis:** changing only when changes must be made. Good conservative doctrine.
- Mutual benefit associations:** see page 145.
- Mutual insurance company:** see page 145.
- Naked trust:** nothing on, in the way of active management. The trustee takes the legal title merely to hand it over to another. Also called a dry trust.
- National Guard:** see page 228.
- Natural affections:** your affection for Amanda and for the children and perhaps for your uncles and aunts. A perfectly good consideration upon which to base a contract or deed.
- Natural children:** illegitimate children.
- Naturalization:** see page 223.
- Necessaries:** see pages 19, 30.
- Necessity, way of:** see page 51.
- Negligence:** see page 111.

Negotiable: see page 164.

Net profits: everything made over losses and expenses. Interest on investment is not deducted before computing it.

Neutrality laws: see page 220.

New trial: trying the case over on the facts, because of some error in the first trial.

Newly discovered evidence: Smith wins the case. But since the verdict, new evidence has come to your knowledge which is so important, you think, that it might very well have turned the jury in your favor. You take it to the judge and ask for a new trial. If he regards it, as you do, of material importance and if, and this is the important thing, you could not have secured the evidence for the trial by making reasonable effort to get it, he may grant you a new trial on this ground. He can or not as he thinks best, the issue being whether injustice would result from refusal.

Next friend: one who acts for an infant or lunatic in court, although not appointed guardian for the purpose.

Next of kin: persons inheriting your estate if you die intestate.

Nisi prius: the court where your case is tried on the facts—before the jury, if it is a jury trial. The nisi prius court is distinguished from the appellate court, to which your case goes if you or Smith appeal.

No bill: when the grand jury decides that the evidence against the accused does not warrant a trial, the words “no bill” are indorsed on the bill of indictment and the prosecution is dropped.

Nolle prosequi: when the district attorney decides that he has not enough evidence to go ahead with the prosecution, he makes this entry in the record.

Nolo contendere: a plea by the defendant in a criminal case when he does not want to acknowledge his guilt as he would do by pleading guilty, but places himself at the mercy of the court.

Nominal damages: see page 109.

Nominal partner: allowing your name to be used as a partner in the firm although you have no interest in it.

Nominal plaintiff: if you assign your cause of action against Smith to Jones and he brings action against Smith but brings it in your name, you are the nominal plaintiff, Jones the real one.

Non-commissioned officer: officer in the army appointed by

his superior officer, holding no commission from the government.

Non compos mentis: unsound mind.

Non-intercourse act: a statute prohibiting commerce with an enemy nation.

Non-user: failing to make use of a franchise or right.

Non-suit: where the court dismisses your action or you give it up voluntarily yourself. It does not affect your cause of action. You can start another action later on the same ground.

Not guilty: a plea by the accused denying his guilt and placing the burden on the state of proving it.

Notes, promissory: see page 163.

Notice of dishonor: before you can sue the indorser on a promissory note, you must present it to the maker for payment, be refused, and notify the indorser of the refusal. After such notice you can begin suit.

Notice to quit: see page 41.

Novation of parties: see page 160.

Nudum pactum: a contract without consideration and so not enforceable.

Nuisance: see page 113.

Nunc pro tunc: a late entry on a record which should have been made at an earlier date. It is made "as of the date" on which it should have been made.

Nuncupative will: an oral will made before witnesses by a person under circumstances when a written will could not be made. A will by a soldier in battle, or by a sailor on a sinking ship.

Oath: see page 118.

Objection: When your suit against Smith is being tried, errors in the trial must be brought to the attention of the judge while they are being made, to give the judge a chance to correct them at the trial. You do this by "objecting." The rule is that you must object, and then if the judge rules against you, you must "save an exception" to the ruling, in order to bring the point to the appellate court.

Obligor: the person who assumes an obligation. The obligee is the person to whom the obligation runs.

Offer: a necessary step although not by any means the first in negotiating a contract. In some negotiations it is the beginning of the end.

- "On all fours":** when you have found somewhere in the law reports a case which is similar to yours in every material detail, you refer to it as a case "on all fours" with yours.
- Onus probandi:** burden of proof (which see).
- Open account:** an account not yet closed or settled.
- Opening a judgment:** the effect of it is to prevent an execution issuing on the judgment against your property.
- Opening and closing:** In your suit against Smith, after the evidence is all in, your lawyer argues to the jury first if he wants to, or he may waive his right to "open," and he generally does. Then Smith's lawyer argues. Then your lawyer closes. What generally happens is that Smith opens and you close, but only because you let him. If Smith is the plaintiff and you are the defendant, the order is reversed so far as you and Smith are concerned.
- Operative words:** the words in a deed or lease giving effect to the act of conveying or leasing.
- Opinion:** (a) a witness's opinion as distinguished from what he really knows. Opinions are not admissible. Facts are. Expert's opinion is an exception. (b) Opinion of the appellate court giving reasons for its decision. Both opinion and decision are printed in the law reports.
- Option:** see pages 42, 43.
- Order nisi:** an order to become effectual at a future date unless a condition named in the order is performed, in which case the performance of the condition annuls the order.
- Ordinances:** see page 233.
- Ordinary care:** care used by a person of ordinary prudence in a particular situation. That is the standard of care generally required in most situations.
- Organic law:** constitution.
- Original jurisdiction:** jurisdiction to try the case in the first instance. Distinguished from the appellate jurisdiction. See **Appeal and Error**.
- Original package:** the package in which goods are imported.
- Originality:** an essential to a valid patent.
- Overissue:** relating to the assurance bondholders are generally given in their contract that so many bonds only will be issued against so much property as security. An issuance of bonds in excess of the agreed or lawful ratio is called an overissue. The rights of the holders of the original bonds will not be affected thereby. They are entitled to payment in full before holders of overissued bonds realize on their security.

Overt act: act in the open. Generally required, not always, to constitute an offense.

Ownership: see page 190.

Paper title: apparent title so far as the papers show, the inference sometimes being that it is not a good one.

Par: market value of a bond or share of stock equal to its face value.

Paramount title: the title that wins if it comes to a contest.

Pardon: an executive order relieving one sentenced for crime from punishment.

Pari delicto: equally at fault, where two or more are connected with the same offense.

Pari passu: where creditors are entitled to equal consideration in the distribution of a fund.

Parish: (a) in Louisiana, territory corresponding to a county in other states; (b) in New England, originally, the territory served by a church, but now members of the church community from which it receives its financial support. Members of the parish are not necessarily members of the church itself.

Particeps criminis: one who participated in the crime. He may not have been equally at fault, however, which is what *pari delicto* means.

Parties: to a contract or to an action in court. In both cases, the term means those directly connected with the contract or action who are bound by it.

Partition: see page 192.

Partition fence: see page 52.

Partnership: see page 129.

Party to be charged: referring to the Statute of Frauds (which see) and particularly to the person who must sign the memorandum required by the Statute.

Party wall: see page 53.

Patent: see page 225.

Patent to public land: see page 226.

Patent ambiguity: see **Latent ambiguity**.

Pawnbroker: see page 171.

Penal action: an action to recover a penalty incurred under a statute.

Penal clause: the clause in the statute which fixes the penalty.

Penal statute: a statute which provides punishment for its violation in the form of a penalty.

Penalty: (a) a sum of money which you must pay if you violate a statute providing that kind of punishment; (b) a sum of money you agree to pay if you break a contract, whether it is enforceable against you or not; see page 110.

Penalty of a bond: see page 155.

Per stirpes: You die leaving surviving you your father, one brother, one sister, and three children of your own. Then your father dies leaving no will. His estate is divided into thirds, one to your brother, one to your sister and one is yours, only you are not alive to take it. Your children take it as your representatives. They are said to take it per stirpes or by right of representation.

Peremptory challenge: challenging a juror or preventing his sitting as a juror in your case without giving any reason. Each side can do that a limited number of times.

Performance of contract: see page 154.

Perjury: see page 119.

Perpetual injunction: the first step to take to stop Smith in his evil practices to your irreparable injury is to get a temporary injunction at once merely on your statement to the court. The court grants it and fixes a day for hearing Smith. If then it appears that what you say is true and Smith has no excuse for it, the court grants a perpetual injunction.

Perpetuating testimony: reducing to writing what a witness has to say even though no action has been started, so as to have it if one is started.

Perpetuity: it is against the policy of the law to allow conditions to be placed on land so that it can never again be sold or disposed of. You are allowed to do it for a limited time—but only for that time. Conditions making land “inalienable” beyond the lawful time have no effect. The rule fixing that time is called the “Rule against Perpetuities” and the time it fixes is a “life or lives in being and twenty-one years.” That is if you wish to tie up your estate so it cannot be sold, you can do it if you limit the time to twenty-one years after the death of the last one surviving of a group of living persons whom you name. If you do not limit the time to this or something less, it has no effect, and the land can be sold at any time.

Personal action: an action brought against you personally—not against a particular piece of land. The latter is called a real action. Often they are called “actions in personam” and “actions in rem.”

Personal estate: personal property (which see).

Personal liability: your liability for another's debts, as, for example, debts of the partnership of which you are a member.

Personal property: property capable of being moved from place to place and separated from the land.

Personal representative: this term is used in law in a very limited sense, referring specifically to your executor or administrator and to no one else.

Petition: statement of facts on which you base your prayer to the court for relief.

Petition for instructions: by executor or trustee when he wants the court to tell him what an obscure clause in the will means.

Petition, right of: you and your neighbors are guaranteed by the Constitution the right to petition the government whenever you want on any matter you want.

Plaintiff: when you sue Smith, you are the plaintiff. Smith is the defendant.

Plea: Smith's answer to your bill in equity (which see).

Pleading: a generic term referring to all the statements of facts made by you and Smith, and from which the issue to be fought out between you is made up. For successive pleadings see **Rejoinder**.

Pledge: see page 172.

Police power: inherent power of the government to legislate for the public welfare. *But* a legislative act must be found by the court to be in aid of the public welfare before it can be held to be a valid exercise of the power. And that brings us to all the decisions of the court where the real scope and extent of the power has been developed and defined.

Police power, United States: see page 213.

Police power, state: see page 231.

Police power, taking land under: see page 194.

Posse comitatus: the sheriff of a county when executing a writ in a criminal case, if he anticipates resistance, can summon a group of citizens to assist him. And the citizen, with certain exceptions, must respond when called upon.

Posthumous child: a child born after the death of the father.

Posting of notice: giving publicity to it by posting it in a public place.

Power of attorney: written form of authority you give your agent.

Powers of government: see page 212.

Precatory words: your request of your legatee or devisee in your will to do so and so with the property you give him if he thinks best, but not compelling him in any way. These words in a will are called precatory—prayerful, beseeching, very far from commanding.

Precedents: decisions of the courts in support of or against your theory of what the law is. Also used with reference to past legislative acts as bearing upon subsequent legislation.

Precept: a writ or order directed to an officer.

Preference: paying one of your creditors and letting the others go unpaid, or giving one a right to payment in advance of others. The use of the word assumes there is not enough to pay all in full, or that there may not be a ground for bankruptcy proceedings.

Preliminary examination: the hearing to determine whether one accused criminally shall be held or discharged from custody pending future developments in the case. If held, he is generally given his liberty on bail.

Premium, insurance: see page 144.

Premium on building loan: see page 59.

Preponderating evidence: see **Doubt**.

Prerogative power: uncontrolled discretionary power.

Prescription: see page 99.

Presentment: the writing containing an accusation which a grand jury makes on its own initiative without the district attorney laying before it a bill of indictment.

Presumptions of life, death and survivorship: see page 252.

Presumption: an inference from certain facts proven that another fact exists. When the law makes an inference it is called a presumption. As to conclusive and rebuttable presumptions, see **Conclusive presumption**.

Prima facie: when you sue Smith, you may make use of a presumption (see *supra*) in the first instance in establishing your case; that is if you prove certain facts, the law will presume from them the existence of the fact you must prove in order to win. This is called a prima facie case. It is then for Smith to bring forward evidence to show that the presumed fact does not exist.

Primaries: see page 239.

Primary evidence: best evidence (which see).

Principal and agent: see page 138.

Principal and surety: see page 137.

Priority: right of one creditor to be paid in full before others are paid.

Privacy: see page 107.

Private road: see page 53.

Privileged communication: see page 116.

Privileges and immunities: rights guaranteed by law; citizenship rights granted by the Constitution; special rights enjoyed by certain classes, as ambassadors.

Privity of contract: the "tie that binds" persons together under the same contract.

Privity of estate: another tie that binds persons together under the same land title.

Probating a will: see page 180.

Process: the notice you have served by an officer on Smith when you sue him.

Profit a prendre: the right to take something out of the soil from another's land.

Prohibition: you must not do it. (a) A writ from a superior court to an inferior court commanding it to stop the trial of a case before it on the ground it has no jurisdiction or power to try it. (b) You must not yourself violate the Volstead Act or aid others to do it.

Promissory note: see page 163.

Proof: see **Doubt**.

Property: see page 190.

Protection, writ of: if you are suing some other Smith in some other state and it happens to be a state where there is a warrant out for your arrest in some other matter, the court there will protect you from arrest while you are on your way to court to fight Smith, and it will protect you too on your way home. It is a federal court writ issued to protect you from arrest by state officers while you are in attendance on court.

Protocol: a preliminary treaty.

Proviso: a clause in a statute or instrument conditioning its going into effect on the performance of an act or happening of a contingency stated in the clause in the statute or instrument.

Proximate cause: the act which was the real cause of the injury. When there are a string of causes leading up to the accident, you eliminate all you can and still be able to say that the accident would have happened. Of those that remain, the nearest in point of time to the accident is its proximate cause. If that act was yours and if it was

negligent, you are liable unless the plaintiff himself contributed to the result by his own negligent act.

Public service corporation: see page 241.

Punitive damages: see page 110.

Purchaser for value: see page 165.

"Purging" the registration list: dropping the dead and non-residents from the list.

Putative father: the person supposed to be the father of an illegitimate child.

Qualified indorsement: adding words to the indorsement, changing the indorser's liability in some way from what it would be if nothing were added. Generally the added words are "sans recours," without recourse, which means that the indorser passes title but assumes no liability beyond guaranteeing the genuineness of prior indorsements.

Qualify: modify.

Quantum meruit: a form of remedy allowing you to recover what you deserve to be paid for your services—in other words, what they are reasonably worth. That happens when no rate of compensation has been fixed in the contract.

Quantum valebat: same as quantum meruit, only applied to goods which you have sold without putting a price on them. You recover what they are worth.

Quash: stopping a criminal trial as soon as it is made to appear that the indictment is bad. The indictment is the thing that is quashed.

Quasi: something like it.

Quasi-contract: contracts implied in law which are not real contracts but like them.

Quasi-municipal corporation: see page 235.

Questions of fact and of law: questions of fact relates to the existence or non-existence of a fact in a case. These questions are for the jury to decide and, within certain limitations, its decision on the facts is final. Questions of law relates to what the law is and how it shall be applied to the facts. This is for the court to lay down, which it does in the form of instructions to the jury. The actual application of law to the facts is made by the jury so that its decision or verdict is really a mixture of fact and law.

Quid pro quo: consideration for a contract.

Quiet enjoyment: a covenant in a lease which you give your tenant. It is not a guarantee that the house is going to be quiet, or that the tenant is going to enjoy it, or that you will not intrude on his privacy now and then to see that things are going along all right. It does mean that you guarantee that no one with a better title than yours will enter and oust him from his possession under the lease.

Quieting title: see page 55.

Quitclaim deed: a deed by which the owner of land releases his interest in it to another but does not undertake to warrant the title. He generally however does include in it a covenant that there are no encumbrances of his own making on the property.

Quo warranto: the name of a writ by which the government starts an action to oust a public officer from his office, or a corporation from further use of its franchise.

Quota: an allotted share.

Raising a check: fraudulently altering the amount for which the check is drawn.

Ratification: adopting as your own act an act done for you by another.

Real action: see **Personal action**.

Real covenant: a covenant in a deed which becomes a part of the estate conveyed. Another name is "covenants running with the land."

Real estate agent: see page 138.

Real property: see page 190.

Reasonable and probable cause: see **Malicious prosecution**.

Reasonable care: see **Ordinary care**.

Reasonable doubt: see **Doubt**.

Reasonable skill: the skill which an average man in the same business or profession as yours generally uses in his work.

Reasonable time: there is a time limit on everything you obligate yourself to do, else there is no obligation. If you do not fix it yourselves, the law fixes it for you at a "reasonable time" under the particular circumstances.

Rebuttable presumption: see **Conclusive presumption**.

Rebutting evidence: evidence to control or overcome a "presumption of fact." See **Conclusive presumption**.

Receiver: an officer of the court appointed by the court to

manage property in the custody of the court. Done frequently in reorganizing corporations in embarrassed circumstances where an adjustment of claims is being made and a reorganization worked out.

Receiver's certificates: the receiver, whose duty is to carry on the business of the corporation while it is being reorganized, in order to raise money to do it, issues certificates of indebtedness under order of the court.

Reciprocity in copyright: arrangement between nations whereby copyright privileges of one country are extended to authors living in the other.

Recital: statement of fact in a document or pleading.

Recognizance: an undertaking you sign in court to do what the court requires you to do, and to pay the penalty named if you do not do it.

Recording a deed: filing it in the registry for copying in their books which are open to public inspection. It puts all on notice of whatever is in your deed, and that the conveyance has been made.

Recoupment: when you sue Smith to recover a stated sum and Smith cuts it down by proving a claim against you for a sum perhaps not so large.

Recourse, without: see **Qualified indorsement**.

Recrimination: in divorce, one sued in divorce for adultery charging his life-partner with doing it too.

Redemption, mortgages: see page 61.

Re-examination: restoring the credibility of your witness whom Smith has just cross-examined, by re-examining him on the points Smith has touched.

Referee: a lawyer appointed by the court to hear the parties in a case and to report back to the court what he thinks about it. He does the work for a court of law that a master-in-chancery does for a court of equity. See **Master-in-chancery**.

Reference: order of court referring a case to a referee.

Reformation of instruments: see page 159.

Refreshing the witness's memory: giving him a written memorandum or calling to his attention something connected with the fact you want him to testify to, to see if that does not bring back his recollection of it.

Refund: money paid back to you which, through no fault of yours, you paid by mistake.

Rehearing: a second hearing.

Re-insurance: you insure your house for \$25,000 in the Jones

Mutual. The Jones Mutual then insures itself against loss on the same risk with the Brown Insurance Co. to the extent of \$10,000. This second transaction is re-insurance.

Rejoinder: when you and Smith undertake in your pleading to get all the facts before the court and on the record, you each state facts which call for other statements of facts from the other and these statements string out at some length, especially if each of you is intent on having the last word. The order is this. You start it with a declaration. Smith files an answer to that. You file a replication to his answer. Smith files a rejoinder to your replication. You file a surrejoinder to Smith's rejoinder. Smith files a rebutter to your surrejoinder. You file a surrebutter to Smith's surrejoinder. That finishes Smith.

Release: when you sign off your rights to another.

Relevancy: see **Competent evidence.**

Religious societies: see page 67.

Religious test: see page 237.

Relinquishment: abandonment.

Remainders: see page 175.

Remedy: the particular kind of action you must use to secure the relief you want.

Remittitur: if the court thinks the jury brought in an excessively high verdict in your favor, he tells you to give up your right to so much of it or he will set the whole verdict aside. By remitting the amount the court suggests, you hold on to the rest of it.

Removal of causes: under federal legislation, Smith can have your case against him in the state courts removed to the federal court under certain circumstances.

Renewal of lease, perpetual: see page 196.

Renewal slip, insurance: see page 148.

Renouncing citizenship: see page 221.

Rent: see page 40.

Reopening a case: a court of equity may open a case to correct mistakes in testimony. The effect is to try the case over again on new testimony. Rehearing is a second trial on the old testimony.

Reorganization: a financial readjustment of the rights of stockholders and bondholders of an insolvent corporation on a plan which all accept.

Repeal: annulling a statute.

Replevin: a form of remedy by which you can take back into your hands at once goods which you say have been

wrongfully taken away from you, and try your right to them in court afterwards. Meanwhile the other party has your bond to redeliver the goods to him if the court finds that he is entitled to them.

Replication: your reply to Smith's answer. See **Rejoinder**.

Representations: statements of fact which you make to Smith intending that he shall act on the basis of their being as you say they are.

Republication: giving effect again to a will you made some time ago, and afterwards revoked.

Res gestæ: the circumstances surrounding the particular act or circumstance in issue. They are admissible in evidence to explain it. They all together constitute really a single transaction.

Res judicata: an issue which has already been decided in court. It binds parties to it, so that what was decided must be accepted as an existing fact in subsequent litigation between the same parties.

Rescission of contract: parties to the contract consenting to be no longer bound by it.

Reservation in deed: when you convey land and hold back for yourself some right in or over it. An exception in a deed also is something reserved. But a right excepted is a previously existing right. A right reserved is a new right created by the reservation.

Reserve banks: member banks in the Federal Reserve System: see page 227.

Residuary clause: the clause in your will giving to your "residuary legatee" what is left after payment of debts, devises and legacies.

Residuary powers of government: see page 212.

Respondeat superior: doctrine holding you responsible for the authorized acts of your agent.

Respondent: the defendant in a divorce action or suit in equity.

Respondentia: a loan advanced on the cargo under an agreement that the lender loses his money if the goods are lost at sea, but recovers it back with the interest stipulated if they reach destination.

Restitution, writ of: when Smith's judgment against you has been reversed, the court orders Smith to restore to you the property he took from you under the execution issued on the judgment.

Restraint of marriage: clauses in a will conditioning a legacy

on the legatee not marrying at all or not marrying a particular person. In some cases, the gift is good, the condition is ineffectual. In other cases, the condition stands.

Restraint of trade: a rule of law grounded on public policy making ineffectual such contracts as are held by the court to be in restraint of trade, as, for example, agreements not to engage in a certain business, and contracts tending to create a monopoly.

Restraint on alienation: (a) giving property to a married woman but providing that she shall have no power to dispose of it. That is legal but it holds only during the marriage. (b) see **Perpetuity**.

Resulting trust: a trust not made in express terms but implied by the law under circumstances where the law says either that the parties must have intended a trust, or that, independently of their actual intention, they will be held to have intended it. The law does this in the last case to prevent injustice.

Restrictions in deeds: restricting the use which can be made of the land conveyed.

Retrospective laws: see page 218.

Return of the writ: when the officer who served the writ returns it to the court after indorsing on the back of it a memorandum of what he has done.

Return day: the day when all writs issued since the last return day must be returned to the court by the officers serving them.

Reversal: a higher court annulling the decision of a lower court.

Reversion: see page 175.

Reversionary interests in personalty: see page 175.

Revest: securing possession again of property which has been taken from you.

Review: where the appellate court goes over a case again to correct possible mistakes.

Revised statutes: see **Statutes at Large**.

Revival: (a) reviving by a new promise or acknowledgment a debt which has been barred by the Statute of Limitations (which see). (b) If nothing is done to collect money on a judgment for a particular length of time, it becomes "dormant"—a sleeping judgment. Then if you want to use it, you must wake it up. This you do by starting another action on the judgment, or by another

form of remedy called a "scire facias"—sci. fa. for short. That brings it to life again.

Revocable license: a license which can be annulled. Most are that kind. But sometimes the licensee has acquired an interest in the property which the law protects.

Revocation of will: see page 180.

Reward: see page 171.

Right of way: right to pass over the land of another.

Riparian proprietors: owners of land on the bank or shore of a body of water.

Risks, insurance: the particular contingency you insure against.

Road, private: see page 53.

Rule against perpetuities: see **Perpetuity**.

Rule day: see **Rule nisi**.

Rule nisi and absolute: you are suing Smith but the case has not yet come to trial. You want some kind of relief against him in connection with the case. You secure a "rule nisi" from the court. That is a notice from the court to Smith that you have asked for certain relief and that the court will give it to you *unless* Smith appears on the day stated, called the return day, and gives some good reason why it should not be done. If Smith has no reason or one not good enough, the rule is made absolute. That is, you get what you want.

Rule in Shelley's Case: see **Shelley's Case**.

Rules of construction: see pages 46, 154, 181.

Rule to show cause: see **Rule nisi**.

Rules of practice: court rules governing practice and procedure in the court.

"Running" of the Statute of Limitations: see page 162.

"Running with the land": see **Real covenant**.

Safety appliance act: act compelling railroads to equip themselves with certain safety appliances.

Sale: transfer for a money consideration.

Sales of goods: see page 135.

Salvage: compensation given by law for saving property in peril at sea. It includes pay for time and expense involved, and a reward or bounty to master and crew of the salvaging vessel.

Sanction: the penalty inflicted for violation of law.

Sanctuary: where the sanction, or penalty of the law, cannot be executed.

Satisfactory performance, contracts: see page 64.

Saving clause: a clause in an instrument excepting something from its operation.

Scandalous matter: in pleading. If immaterial to the issue, it will be stricken out.

Schedules, tariff: see page 206.

Scienter: knowledge of a fact. Sometimes it is one of the essentials in a crime or tort.

Scintilla of evidence: when you sue Smith, you must prove your case, of course. But there is another rule governing the amount of proof you must have in order to claim a right to have the jury consider it. Some say it must at least be enough to warrant a verdict in your favor, if the jury takes your view of it. Others say you are entitled to go to the jury with it if you have any at all, even a scintilla. This is the "scintilla" view.

Scire facias: a writ which is based on some public record. The common illustration is "sci. fa." to revive a judgment. See **Revival**.

Scotch marriage: see **Gretna Green**.

Scrip: written evidence of a right to shares in a corporation when they are issued.

Scrivener: conveyancer, one who writes deeds for a living.

Scroll: a twirl of the pen taking the place of a seal on a deed.

Seal: a formality in the execution of certain documents, necessary for some of them. Some wax dropped on and stamped, and a ribbon tucked in if you want it. Or a gummed paper, red or gold, or in some states, a scroll, necessary when a statute requires it. Otherwise not.

Sealing a verdict: if the court is not in session when the jury reach a verdict, they put it in an envelope and seal it. Then they can go home.

Search and seizure: see page 106.

Seaworthiness: fit to go to sea. If your ship is lost at sea, you cannot collect the insurance if it is shown to have been unseaworthy.

Secret partnership: when some of the partners are not known to the public.

Secured creditor: one whose claim is secured by mortgage or otherwise.

Security for costs: if you are living abroad when you sue Smith, the court requires you in some states to file a bond to pay Smith the costs of the suit if he wins.

Seisin: possession of land by one also having the title. When

possession is delivered to the one with title, there is what is called "livery of seisin."

Self-defense: justification for killing a man.

Self-executing treaty: a treaty which goes into operation of itself without the necessity of subsequent legislation by the legislatures of the treaty-making states.

Self-serving declarations: oral or written statements made by you out of court, not under oath, and which are all to your advantage, but when you offer them as evidence in court are not admissible. It is sometimes difficult to say whether a statement is self-serving. That is a question for the court to decide.

Sentence: judgment of the court in a criminal case.

Separate estate, Amanda's: see page 30.

Separate maintenance: support a wife is entitled to when she and her husband separate.

Separation: (a) husbands from wives: see page 33; (b) crops from the soil.

Sequestration: a writ or order by which an equity court directs its officers to take your rents and profits away from you until you see fit to obey its decree.

Servants: see page 140.

Served with notice: when the court officer places a legal notice directed to you in your hands or leaves it at your home. This is called "personal service." Printing the notice in a newspaper when allowed as a substitute is called "service by publication."

Servient estate: see **Easement**.

Set aside: cancelling a deed, transaction, or verdict.

Servitude: easement (which see).

Set-off: counterclaim (which see).

Settlement: agreement culminating in the discharge of an obligation.

Settlor of a trust fund: one who establishes it.

Several liability: individual liability as distinguished from a liability shared with others.

Severance: harvesting crops.

Share: portion. An interest in a corporation property and profits from the business.

Shelley's Case, Rule in: if land is given you *for life*, with remainder *to your heirs*, under this rule you take not a life estate, but a fee simple. For explanation of fee simple, life estate and remainder: see page 175.

Sheriff: the state's administrative officer for the county.

Ship's husband: one who equips it, manages, and controls it.

Ship's papers: the ship's credentials which she produces when persons having a right to know ask her who she is and where she comes from.

Shipping articles: agreement between master and crew.

Short haul: the function of the Interstate Commerce Commission is to prevent unjust discrimination in rates. The distance over which goods are carried is one element but not the only element which the Commission considers in determining whether rates between places discriminate in favor of one of them. Rate for a "short haul" may be in excess of a proportional part of the long haul rate for the same distance and still not be discriminatory.

Simple contract: contract not under seal.

Sinking fund: see **Funding system**.

Situs: location of land.

"Sky laws": a uniform system of laws regulating aviation, proposed for adoption by the states, and recently enacted into law in New York State. They are based on the Federal regulations and cover such details as the licensing of pilots, inspection of planes, establishment of airports and the establishment of a state commission for the promotion of aviation. Col. Lindbergh in an address before the New York Legislature, February 29, 1928, thus stresses the need of uniformity in the law. "It would be very difficult for a pilot making a transcontinental flight, which is becoming common to-day, to remember the regulations of each state that he passes through. If regulations are uniform however it will be a simple matter to keep aeroplanes operating in proper condition and by experienced personnel."

Slander: see page 115.

Slander of title: a statement by another to the effect that your title is not a good one or is not so good as you claim it to be.

Smart money: punitive damages. See **Exemplary damages**.

Solicitation: persuading another to commit a crime.

Solitary confinement: separate from other prisoners and persons.

Solvency: ability to pay one's debts when due.

Sovereignty: see page 212.

Special agent: your agent for a particular service. See **General agent**.

- Special assessment:** assessment to pay for public improvements laid on the land benefited thereby, and if you are the owner you must pay it.
- Special demurrer:** when there is some particular flaw in Smith's pleading which you object to, you must point out what it is by special demurrer. Not enough to file a general demurrer. See **Demurrer**.
- Special deposit:** see page 167.
- Special indorsement:** when besides writing your name across the back of a note, you also write above it some particular direction, as for example, "Pay to Patrick or order."
- Special issue:** a plea Smith files denying some particular point in your declaration which you must prove to win. The general issue is filing a denial to the whole declaration.
- Special pleading:** if instead of denying in toto what Smith has said in his pleading, you plead new facts to show that you have the right of it, your setting forth of new matter is called special pleading.
- Special verdict:** sometimes the court asks the jury to answer certain specific questions in its verdict. A verdict answering particular questions is a special verdict.
- Specific legacy:** gift by will of a particular thing or a specified part of the testator's estate.
- Specific performance:** see page 160.
- Spendthrift:** one who is so much so as to threaten suffering to his family or making himself a public charge. His property is taken from him for a trustee to manage. This is called a spendthrift trust.
- Splitting a cause of action:** bringing an action for only a part of a cause of action. The rule is against it. You must try all of it at once.
- Spoliation:** altering or charging a writing by someone not a party to it.
- Stare decisis:** following former decisions in the same jurisdiction on the same point. The court however does not always do it, unless a land title is involved. Then it does. It would upset land titles all over the state if the court should overrule a former decision in a land case.
- Statement of claim:** see **Declaration**.
- State's evidence:** testimony of an accomplice for the state. Generally he is given a light sentence or is let off altogether.
- Status:** one's legal position with reference to others in the community.

Status quo: condition of things at a particular time.

Statute of Frauds: see pages 152, 157.

Statute of Limitations: see page 161.

Statutes at Large: the annual printed volume of statutes including everything, general and special and local laws passed during the year. Periodically a commission is appointed to collect and rearrange the general laws only. Their report is adopted and re-enacted into law, and this constitutes the Revised Statutes of a jurisdiction.

Stay of execution: when "stayed" the execution cannot be levied on the debtor's property.

Stipulation: clause in an agreement providing for doing or not doing something.

Stock, stock certificate, stockholder: see page 131.

Stockbroker: see page 198.

Stock dividends: see page 210.

Stop, look, and listen: failure to do so at a grade crossing as constituting contributory negligence preventing your recovery against the railroad.

Stop order: an order to your stockbroker to stop holding your stock for a further rise after the market price reaches a point named in the order.

Stoppage in transitu: the right of the seller of goods which have not been paid for to stop them on their way to the buyer and take them back. He must do it before they get into the buyer's hands.

Stowage: arrangement of cargo in the different parts of a ship determined by agreement.

Strict construction: taking words in their literal meaning.

Strictissimi juris: when you are given permission to do a thing on another's land, you must keep strictly within the terms of your license.

Stumpage: purchase of standing timber to be cut down by the purchaser.

Submission to arbitrator: see page 83.

Subornation of perjury: persuading another to perjure himself. It is in itself a crime.

Subpoena: summoning Smith to come to court "under penalty" if he doesn't.

Subpoena duces tecum: and to bring with him his books and papers.

Subrogation: when one takes another's place as creditor.

Subscriptions: see pages 68, 156.

Substantial damages: when the injury suffered is considerable,

entitling the sufferer to compensatory damages. Contrasted to nominal damages.

Sufferance, tenant at: a tenant's holding over after the end of his term without the landlord's permission.

Summary proceedings: legal proceedings which do not follow the regular order. This can only be done where authorized by statute.

Summons: a notice to come to court.

Sumptuary laws: laws to restrain your unrestrained ways of living. Irsome but designed for the public good.

Supercargo: an employee of the owner of the cargo sent along with it and in charge of it, to sell it to advantage and buy others. A field-agent afloat.

Supersedeas: a writ stopping proceedings at law.

Supplemental answer: a pleading by the respondent in equity to correct, add to or explain his answer.

Supplemental bill: bill by the petitioner in equity in addition to his original bill.

Support: (a) right to have your land and buildings supported by your neighbor's land; (b) necessities for the family.

Suppressio veri: holding back the truth. A fraud which operates to annul contracts.

Surety: see page 137.

Surprise: when your suit is being tried against Smith and he brings out evidence which alters the situation completely, which you could not possibly have found out yourself and did not know anything about, the court will say he has taken you by surprise, as he certainly has, and will grant you a new trial to prevent injustice.

Surrender: where a life-tenant gives up his estate to the person holding the fee. If it is the other way round, the person holding in fee giving to the life-tenant, it is called a release.

Surrender of insurance policy: giving it back to the company for cancellation.

Surrendering possession of a house after lease: giving it up.

Surrender value, insurance: see page 144.

Surrogate: judge who presides over the court which probates your will.

Survivorship, presumption: see page 253.

Symbolic delivery: goods must be delivered to the purchaser on a sale in order to pass title. But bulky articles often cannot be. The substitute for it is the delivery of a sample as a delivery of the whole.

"Tacking": piecing together adverse possessions of successive claimants to make up adverse possession for the prescriptive period: see page 54." See **Adverse possession**.

Tangible property: property, both real and personal, that can be touched and handled.

Tariff: see page 206.

Taxes: see page 204.

Tax deed: deed to a purchaser at a sale of land for taxes.

Tax levy: raising money by a tax.

Tax lien: until your bill for taxes is paid, it is a charge on your land. That means you cannot sell and give a clear title until you pay your taxes.

Tax sale: sale at which land is sold for unpaid taxes.

Tax title: the title a purchaser at a tax sale acquires.

Taxing costs: fixing the costs of a suit which must be paid generally by the losing party.

Tenant: see page 39.

Tenancy-in-common: see page 191.

Tender: offer of money due.

Term: (a) the period over which your lease extends; (b) a period during which a court is open for business.

Territorial waters: the distance out from shore a nation exercises jurisdiction.

Testament: your will.

Testate: you, after you have made a will and died.

Third party: a stranger to a transaction, an outsider.

Title deeds: deeds on which your title depends.

Title insurance: see page 45.

Tonnage tax: tax on ships entering port.

Torts: see page 108.

Town: see page 235.

Trade-mark: see page 134.

Trade secrets: manufacturing processes. Their owner is protected against breach of trust or fraud of employees in disclosing them to competitors.

Trader's talk: puffing up goods to induce a sale. You have no remedy unless there has been a misrepresentation of fact.

Transfer: passing title from one to another.

Transitory action: personal action where the cause of action might have arisen in any county. The antithesis of it is an action concerning land which must always be brought in the county where the land is.

"Transportation for fourteen years": banishment to a penal

colony. An old English form of punishment. Australia was the colony.

Traverse: a term used in pleading, meaning denial of your adversary's allegations.

Treason: see page 229.

Treasure trove: treasure hidden in the earth and found and no one knows who owns it. If the owner is found, the finder must return it. Otherwise he can keep it, unless a statute gives a part of it to the state.

Treaty: see page 220.

Treble damages: punitive damages fixed by statute in some cases at three times the amount of the actual damage.

Trespass: see page 112.

Trespasser ab initio: one who does not become a trespasser until some time after he enters on the land. Then he does, and his trespass dates back to the day he first came on to the land.

Trover: a remedy to recover the value of your goods which another has wrongfully taken and used.

True bill: when the grand jury decides that there is enough evidence to warrant holding the accused for trial, they indorse "true bill" on the bill of indictment presented to them.

Trust: property held by one for the benefit of another: see page 184.

Trust as a monopoly: see page 243.

Trustee: one with legal title to trust property: see page 185.

Trustee process: same as garnishment (which see).

Turnable cases: see **Attractive nuisance**.

Ultimate facts: the real facts in issue which you must prove to win your case.

Ultra vires: acts done by a corporation outside the scope of its powers.

Unavoidable accident: one for which you or anybody else is not responsible.

"Undertaking": see page 155.

Underwriter: insurer.

Undue influence, contracts: see page 153; wills: see page 178.

Unfair competition or trade: see page 135.

Uniformity of tax: absence of discrimination is an essential to the validity of a tax.

Unilateral contract: see **Bilateral contract**.

Unity of possession: where different estates are in the possession of the same person.

Upset price: minimum price fixed for an auction sale. Bids must reach it or go over to be accepted.

Usage: custom (which see).

Use and occupation: what you must pay for occupation of another's property in the absence of an agreement as to rent.

Uses (a) charitable: see page 244; (b) public: see page 194

Usury: see page 172.

Validity: in conformity to legal requirements.

Valuable consideration: see page 152.

Valued policy: where value of goods insured is stated in the policy and controls in case of loss.

Variance: where you prove something different from what you said in your declaration you were going to prove.

Vendee and vendor: buyer and seller, respectively, of land.

Venditioni exponas: the writ of execution directed to the officer and commanding him to expose your goods for sale.

Vendor's lien: your lien on land which you have sold until the purchaser pays for it in full.

Venue: the county where you try your case.

Verdict: decision of the jury on the facts. See **Special verdict**.

Vested estate or right: if you have now an estate in land, the estate is called a vested estate, regardless of when you come into possession of the land yourself.

Vesting of title: when the title passes to you, it is said to be vested in you.

View: personal examination by the jury of the place where a crime or tort was committed.

Vindictive damages: punitive damages. See **Exemplary damages**.

Visitation: visiting an ecclesiastical or charitable corporation by a board of visitors to find out how things are going.

Vitiating the consent: destroying its effect.

Void: of no legal effect.

Voidable: an act which can be made ineffective if the one having that right chooses to make it so. It remains in force until he does.

Voir dire: examining a witness to see whether he is competent to testify.

Voluntary conveyance: a conveyance without a legal consideration.

Voting trust: stockholders placing their stock in the hands of a trustee or trustees for voting purposes, thereby giving a few trustees control of the company.

Waiver: choosing not to enforce your right, and binding yourself hereafter to abide by your choice. This happens of course when you do it in writing. But there is also an implied waiver if you do not enforce your right within a reasonable time.

Wanton negligence: wilful, gross.

Ward: see page 186.

Warrant: (a) written authority to arrest; (b) written authority to a city treasurer to pay out money to the holder.

Warrant of attorney: authority to an attorney to confess judgment.

Warranty: guaranty.

Waste: wrongfully allowing property in your possession in which others have an interest to go to waste.

Way of necessity: see page 52.

Weights and measures: see page 225.

Weight of evidence: the convincing power of evidence. If the jury are impressed more by what your witnesses say than by what Smith's witnesses say, your evidence is weightier than his. It "preponderates," the law says.

Wharfage: money paid for use of wharf privileges.

Wharfinger: the owner-manager of a wharf.

Will: see page 178.

Will, estate at: an estate which terminates at the will of another.

Winding up: liquidating affairs of a partnership or corporation which is going out of business.

Without impeachment of waste: a life-tenant who can waste and squander the estate if he wants to without being held accountable to the remainder-man in fee. **Estates:** see page 174.

Without prejudice: (a) when the court dismisses your petition but distinctly provides that you may bring it again; (b) in negotiations looking to a compromise, an offer is made with an understanding that it is not to be used against you later as an admission.

Without recourse: see **Qualified indorsement**.

Work and labor: a form of action in which you recover the value of your services when the rate of compensation has not been agreed upon between you and your employer.

Workmen's Compensation Acts: laws allowing workmen compensation for injuries regardless of fault and negligence, and payable without delay. It is collected without suit.

Writ: order issuing out of court.

Writ of assistance: a writ issuing out of an equity court commanding the sheriff to oust Smith from your land and to put you into possession.

Writ of error: writ issued out of an appellate court directed to the trial court and ordering it to send up the record of a case for review.

PART IV

FINDING THE LAW

BIBLIOGRAPHY

The books listed have been selected from those on the library shelves of the Bar Association of the City of New York reserved for text books in current demand and use.

OCCUPATIONAL INDEX

The Occupational Index is a short cut to the law for one hundred and forty-four particular groups of readers. If you are in one of these groups, your surest, shortest route is by way of the pages indicated—that is, if you want the law about yourself. If you are seeking to place restraints upon your neighbor, that is another matter.

SUBJECT INDEX

The Subject Index is for the serious minded and for those who, having experimented with the Companionate, prefer an index of the old reliable, respectable type. It is the kind your mother and father knew and in the knowledge and fear of which you were brought up.

BIBLIOGRAPHY

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